(24,600)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 382.

SETON HALL COLLEGE, PLAINTIFF IN ERROR,

vs.

VILLAGE OF SOUTH ORANGE, IN ESSEX COUNTY, NEW JERSEY, AND BOARD OF EQUALIZATION OF TAXES OF NEW JERSEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 14, 1916.

1 NEW JERSEY, *To wit:*

[Seal State of New Jersey.]

To Village of South Orange, Joseph Arnold, Esq., Assessor and Collector of Taxes in the Village of South Orange, in the County of Essex, and Board of Equalization of Taxes of New Jersey, Defendants, Greeting:

We, being willing for certain reasons to be certified of an assessment for taxes made against Seton Hall College, a corporation of the State of New Jersey, for the year Nineteen Hundred and Eleven, by the Assessor of Taxes of the Village of South Orange, in the County of Essex, and to be certified of certain proceedings taken on appeal to the State Board of Equalization of Taxes of New Jersey by said Seton Hall College, and of the opinion, decision and judgment of the said State Board of Equalization of Taxes thereon, and all matters touching and appertaining thereto before said State Board of Equalization of Taxes:

We do command you and each of you that the said assessment of taxes so made by the said assessor of taxes, and the opinion, decision and judgment of the said State Board of Equalization of Taxes, and the record of the proceedings before the said State Board of Equalization of Taxes, together with all things touching and concerning the same, as fully and entirely as before you they remain, to our Justices of our Supreme Court of Judicature, at Trenton on the fourteenth day of January next, you certify and send,
2 together with this writ, that therein may be done what of right and according to the law of this State should be done.

Witness, William S. Gummere, Esq., Chief Justice of our Supreme Court at Trenton, this twenty-third day of December, A. D. Nineteen Hundred and Twelve.

JOSEPH P. TUMULTY, *Clerk.*

WM. J. KEARNS, *Attorney.*

(Endorsed:) New Jersey Supreme Court. Seton Hall College, a corporation, Prosecutor, vs. Village of South Orange, Joseph Arnold, Assessor and Collector of Taxes in the Village of South Orange, County of Essex, and Board of Equalization of Taxes of New Jersey, Defendants. Writ of Certiorari. Returnable Jan. 14th, 1913. William J. Kearns, Attorney for Prosecutor, 800 Broad St., Newark, N. J. Allocatur Dec. 21st, 1912. Samuel Kalisch, J. S. C. Filed Jan. 31, 1913. Joseph P. Tumulty, Clerk.

3 New Jersey Supreme Court.

SETON HALL COLLEGE, a Corporation, Prosecutor,
vs.
VILLAGE OF SOUTH ORANGE, Joseph Arnold, Assessor and Collector of Taxes in the Village of South Orange, County of Essex, and Board of Equalization of Taxes of New Jersey, Defendants.

On Certiorari.

The Board of Equalization of Taxes of New Jersey doth herewith send to the Supreme Court of the State of New Jersey the petition, judgments and proceedings in the matter of the appeal of Seton Hall College from the assessment of property located in the Village of South Orange, County of Essex, as within it is commanded, as by the transcript under the seal of said Board hereto annexed more fully appears.

[SEAL.] BOARD OF EQUALIZATION OF TAXES OF NEW JERSEY,
By HENRY W. BUXTON, *Clerk.*

4 In the Matter of the Application of "SEXTON HALL COLLEGE," a Corporation Organized under an Act of the Legislature of the State of New Jersey, for the Cancellation of the Tax Assessment for the year 1911 on Property in the Village of South Orange, in the County of Essex, and State of New Jersey.

Petition.

To the Board of Equalization of Taxes of New Jersey:

Your petitioner, Seton Hall College, a corporation organized and existing under and by virtue of a special Act of the Legislature of the State of New Jersey, and the supplement thereto, which supplement is entitled "Supplement to An Act to Incorporate Seton Hall College, approved March 8, 1861," said supplement being approved March 16, 1870, respectfully shows that it is the owner of certain property situate in the taxing district of the Village of South Orange in said County of Essex, consisting of the following tracts of land: tracts 126 to 200, inclusive, on plate 15, and tracts 1 to 25, inclusive, on plate 17 of the assessment map of the said Village of South Orange, said land and premises being situate on South Orange Avenue in the said taxing district.

The said property has been assessed for the purpose of taxation for the year 1911 at a valuation of Thirty-five Thousand Five Hundred Dollars, at which assessment your petitioner is aggrieved, because the said assessment is unlawful and erroneous, and made through error and mistake, as the said land and premises

5 and property of your petitioner are exempt from taxation under and by virtue of an act of the Legislature of the State

of New Jersey entitled "Supplement to An Act to Incorporate Seton Hall College, approved March 8, 1861," which supplement was approved March 16, 1870, and is known as Chapter 267 of the laws of 1870.

Your petitioner has, therefore, not paid the taxes so levied for the year 1911, and prays that the said assessment of Thirty-five Thousand Five Hundred Dollars for the year 1911 be annulled and cancelled.

Dated March 28, 1912.

SETON HALL COLLEGE,
By WILLIAM J. KEARNS,
Agent and Attorney.

Service of a copy of within petition of appeal is hereby acknowledged, and consent is hereby given to the filing thereof this 28th March, 1912.

JOS. ARNOLD, *Assessor.*

STATE OF NEW JERSEY,
County of Essex, ss:

William J. Kearns, of full age, being duly sworn, on his oath says that he is the agent and attorney of Seton Hall College, a corporation of the State of New Jersey, the above named petitioner; that he read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true.

WM. J. KEARNS.

Sworn and subscribed before me this 28th day of March, A. D. 1912.

ELIZABETH A. KEARNS,
Com'r of Deeds for N. J.

6 STATE OF NEW JERSEY,
County of Essex, ss:

William J. Kearns, Attorney and Agent of the above-named petitioner, being duly sworn according to law, on his oath says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true.

WM. J. KEARNS.

Sworn and subscribed before me, this 28th day of March, 1912.

ELIZABETH A. KEARNS,
Com'r of Deeds for N. J.

STATE OF NEW JERSEY,
County of Essex, ss:

Thomas A. Kenny, being duly sworn according to law, on his oath saith that he served a copy of the above petition and affidavit on Wilbur A. Mott, Attorney (attorney) of Village of South Orange, N. J., (name of taxing district), personally, this 29th day of March, 1912.

THOMAS A. KENNY.

Sworn and subscribed before me, this 29th day of March, 1912.
ELIZABETH A. KEARNS,
Com'r of Deeds for N. J.

7 STATE OF NEW JERSEY,
County of Essex, ss:

Thomas A. Kenny, being duly sworn according to law, on his oath saith that he served a copy of the above petition and affidavit on James Mungle, (Secretary) of the Essex County Board of Taxation, personally, this 28th day of March, 1912.
THOMAS A. KENNY.

Sworn and subscribed before me, this 29th day of March, 1912.
ELIZABETH A. KEARNS,
Com'r of Deeds for N. J.

Endorsed: Board of Equalization of Taxes of New Jersey. Petition of Appeal. Seton Hall College vs. Village of South Orange, Essex County, N. J. Filed March 29, 1912. Wm. J. Kearns, 800 Broad St., Newark, N. J.

8 STATE OF NEW JERSEY:

Board of Equalization of Taxes.

In the Matter of Appeal of SETON HALL COLLEGE from the Assessment of Property in South Orange, County of Essex, for the Year 1911.

Judgment.

An appeal in writing having been filed with the Board of Equalization of Taxes, duly verified according to the rules of practice prescribed by said Board, by Seton Hall College, a corporation organized under an Act of the Legislature of the State of New Jersey in which it is alleged that an injustice has been done the said complainant by the assessment of its property for taxation for the year 1911, located at South Orange, in the County of Essex, consisting of the following tracts of land: tracts 126 to 200, inclusive, on plate 15, and tracts 1 to 25, inclusive, on plate 17 of the assessment map of the Village of South Orange, said land and premises being situate on South Orange Avenue in the said taxing district of South Orange; and that said property was assessed erroneously, and such assessment made through error and mistake, as the said property is exempt by law from taxation, and was always heretofore listed as exempt by the Assessor;

And Mr. Joseph Arnold, Assessor of the Village of South Orange, having consented hereto, it is on this eighteenth day of April, Nineteen Hundred and Twelve, at a session of the Board of Equalization of Taxes, Ordered, Adjudged and Decreed, under and by virtue of Chapter 67 of the Laws of 1905, that the assessment of $35,500,

levied against said property of Seton Hall College, a corpora-
9 tion organized and existing by virtue of an Act of the Legislature of the State of New Jersey entitled "An Act to Incorporate Seton Hall College," approved March 8, 1861, and the supplement thereto which was approved March 16, 1870, and known as Chapter 267 of the Laws of the 1870, said property being known and designated as tracts 126 to 200, inclusive, on plate 15, and tracts 1 to 25, inclusive, on plate 17 of the assessment map of the Village of South Orange in said County of Essex, and being situate on South Orange Avenue in the said taxing district of the Village of South Orange, New Jersey, for the year 1911, be and the same is hereby canceled and annulled, and the said property declared exempt from taxation, and the error and mistake of the Assessor, in assessing said property for the year 1911 is corrected accordingly.

And it is further ordered, that this Order be certified to the Collector of South Orange, County of Essex.

FRANK B. JESS, *President,*
B. H. MINCH,
ALFRED T. HOLLY,
GEORGE M. McCARTHY,
Board of Equalization of Taxes.

Attest:
HENRY W. BUXTON, *Clerk.*

Consent is hereby given to the making and filing of within judgment.

JOSEPH ARNOLD,
Assessor Village of South Orange, N. J.

10 Endorsed: 4892c. State of New Jersey. Board of Equalization of Taxes. In re Appeal of Seton Hall College v. Village of South Orange, County of Essex for the Year 1911. Judgment. Decided and Filed April 18, 1912. Henry W. Buxton, Clerk of Board of Equalization of Taxes.

STATE OF NEW JERSEY:

Board for the Equalization of Taxes.

In the Matter of the Appeal of SETON HALL COLLEGE from the Assessment of Property in South Orange, County of Essex, for the Year 1911.

Affidavit.

STATE OF NEW JERSEY,
County of Essex, ss:

(Rt. Rev.) James F. Mooney, D. D., being duly sworn on his oath says that he is the President of Seton Hall College, which was

duly incorporated under an Act of the Legislature of New Jersey, approved March 8, 1861, and a supplement thereto which was
11 approved March 16, 1870; that the said Seton Hall College accepted its said charter under the said Acts, and in consideration thereof purchased real and personal property and erected buildings thereon; that the lands in question with other lands were acquired for the purposes of the College and have been so used continuously since the time of their acquisition, and expenditures of money by the College have been made thereon, in pursuance of the charter of the said college and the supplemental act of 1870.

That after the passage of the supplement aforesaid, to wit: after March 16th, 1870, and before January 1, 1875, Seton Hall College erected buildings, barns, stables and dwellings on its said lands, and also erected buildings on and improved its other adjacent lands.

That the lands in question and so assessed or attempted to be assessed are used solely as pasture lands for cows and the dwellings of the help on the farm; that the whole of the product of said lands, consisting of milk, butter and dairy products, are used exclusively at the table of said College, no part thereof being sold, given away, or otherwise disposed of; that without such products the College would be compelled to buy the same, and the same are absolutely essential and necessary to the use of said College; and that the said College derives no pecuniary profit from the lands in question.

Deponent further says that said College is conducted and has been conducted since its foundation for the advancement of learning, for the education of youth, and the education and preparation of young men for the priesthood of the Catholic Church; that some of
12 the students board on the premises and pay tuition and boarding fees, but all of the receipts from these sources are used for the support and maintenance of the College, and for no other purpose; that some of the students, clerical and lay, in both the secular and ecclesiastical departments of the College, pay no tuition or boarding fees whatever, but are educated as charity students; and that the College does not conduct its business for profit, and no profit is derived therefrom.

JAMES F. MOONEY.

Sworn to and subscribed before me this 10th day of July, A. D. 1912.

CHARLES A. SMITH,
Notary Public of N. J.

Endorsed: State of New Jersey. Board for the Equalization of Taxes. In the matter of the appeal of Seton Hall College from the assessment of property in South Orange, County of Essex, for the year 1911. Affidavit. William J. Kearns, Att'y for Appellant, 800 Broad Street, Newark, N. J.

13 I agree that the within affidavit may be used with the same force and effect as if the affiant had been sworn as a witness

on the hearing and had testified to the facts sworn to. Cross examination waived.

WILBUR A. MOTT,
Att'y for South Orange,
Per JAY TEN EYCK.

STATE OF NEW JERSEY:

Board for the Equalization of Taxes.

In the Matter of the Appeal of SETON HALL COLLEGE from the Assessment of Property in South Orange, County of Essex, for the Year 1911.

Stipulation.

It is hereby Stipulated and Agreed by and between the parties that on the motion to re-open the judgment entered in the above matter and to affirm the tax, the following shall be considered and treated as the facts upon which said motion shall be heard.

(1) Seton Hall College was incorporated under an act of the Legislature of the State of New Jersey entitled "An Act to Incorporate Seton Hall College," Chapter 86 of the Laws of 1861, pages 198 and 199, approved March 8th, 1861.

(2) A supplement to said act was passed, being Chapter 167 of the Laws of 1870, entitled "Supplement to an Act to Incorporate Seton Hall College," approved March 8th, 1861, which supplement was approved March 16th, 1870.

(3) The act incorporating Drew Theological Seminary of
14 the Methodist Episcopal Church, referred to in the supplement above mentioned, was approved February 12th, 1868, (Laws of 1868, Chap. 2, p. 4).

(4) That Seton Hall College accepted its charter contained in the Laws of 1861 aforesaid, and thereafter purchased real and personal property from time to time, erected college buildings thereon and continuously since has been and still is actively engaged in carrying out the purposes of its creation and fulfilling its obligations imposed by its said charter, and has been and is exercising all the powers granted by said charter.

(5) After the supplement to its charter was passed in 1870, Seton Hall College accepted the same, and purchased further lands and erected further buildings, and has continued ever since to live up to the terms of both acts and carry out the purposes of its creation, and has been and is exercising all the powers granted thereby.

(6) That the lands in question with other lands were acquired by the College by a conveyance dated the 17th day of October, Eighteen Hundred and Sixty-four, and recorded in the office of the Register of the County of Essex on the 21st day of February, Eighteen Hundred and Sixty-five, in Book M-12 of Deeds for said County on page 343.

(7) That no assessment or tax has been levied or imposed upon the property, real and personal, of Seton Hall College from the date

of its original charter in 1861, down to the year 1911; and the tax in question, imposed in the year 1911, is the first tax imposed
15 or attempted to be imposed upon the property of said Seton Hall College, real or personal.

WM. J. KEARNS,
Att'y for Seton Hall College, Appellant.
WILBUR A. MOTT,
Att'y for Village of South Orange.

JAY TEN EYCK,
Of Counsel.

Endorsed: State of New Jersey. Board for the Equalization of Taxes. In the matter of the appeal of Seton Hall College from the assessment of property in South Orange, County of Essex, for the year 1911. Stipulation. William J. Kearns, Attorney for Appellant, 800 Broad Street, Newark, N. J.

STATE OF NEW JERSEY:

Board for the Equalization of Taxes.

In the Matter of the Appeal of Seton Hall College from the Assessment of Property in the Village of South Orange, County of Essex, for the Year 1911.

Memorandum. By Mr. Jess.

When this appeal first came before the Board, the assessor
16 who levied the assessment consented in writing to the entering of an order setting aside the assessment, as having been made through error and mistake. Judgment to that effect was entered on the eighteenth day of April, 1912.

On June 11, 1912, counsel for the Village of South Orange appeared before the Board and moved that the judgment be opened and the matter heard de novo. The ground of this application was that the assessor had not been authorized to consent to the cancellation of the assessment. It was shown that the assessment had been made by order of the Essex County Board of Taxation; that the property had theretofore always been considered as exempt from taxation, under the charter of the college, and that the assessor still considered it to be exempt; that therefore, when an appeal was taken to this Board, the assessor consented to the cancellation of the assessment, and that he did not deem it necessary to bring the matter to the attention of the Board of Trustees of the village before so consenting.

Under these circumstances, the Board is entirely satisfied that the judgment of cancellation heretofore entered should be opened and the appeal disposed of on its merits.

The following stipulation of facts was agreed upon by the parties:

"It is hereby Stipulated and Agreed by and between the parties that on the motion to re-open the judgment in the above matter and

to affirm the tax, the following shall be considered and treated as the facts upon which said motion shall be heard:

"(1) Seton Hall College was incorporated under an act of the Legislature of the State of New Jersey entitled 'An Act to in-
17 corporate Seton Hall College,' Chapter 86 of the Laws of 1861, pages 198 and 199, approved March 8th, 1861.

"(2) A supplement to said act was passed, being Chapter 167 of the Laws of 1870, entitled 'Supplement to an act to incorporate Seton Hall College, approved March 8th, 1861,' which supplement was approved March 16th, 1870.

"(3) The act incorporating Drew Theological Seminary of the Methodist Episcopal Church, referred to in the Supplement above mentioned, was approved February 12th, 1868 (Laws of 1868, Chap. 2, p. 4).

"(4) That Seton Hall College accepted its charter contained in the Laws of 1861 aforesaid, and thereafter purchased real and personal property from time to time, erected college buildings thereon and continuously since has been and still is actively engaged in carrying out the purposes of its creation and fulfilling its obligations imposed by its said charter, and has been and is exercising all the powers granted by said charter.

"(5) After the supplement to its charter was passed in 1870, Seton Hall College accepted the same, and purchased further lands and erected further buildings, and has continued ever since to live up to the terms of both acts and to carry out the purposes of its creation, and has been and is exercising all the powers granted thereby.

"(6) That the lands in question with other lands were acquired by the college by a conveyance dated the 17th day of October, Eighteen hundred and sixty-four, and recorded in the office of the Register of the County of Essex on the 21st day of February, eighteen hundred and sixty-five, in Book M-12 of Deeds for said County on page 343.

18 "(7) That no assessment or tax has been levied or imposed upon the property, real and personal, of Seton Hall College from the date of its original charter in 1861, down to the year of 1911; and the tax in question, imposed in the year 1911, is the first tax imposed or attempted to be imposed upon the property of said Seton Hall College, real or personal."

The property involved in this case consists of tracts of land situated in the taxing district of the Village of South Orange and owned by Seton Hall College. These tracts do not include the land upon which the college buildings are erected. The question to be decided is whether the property involved is exempt from taxation by virtue of the supplement to the act under which the appellant was incorporated. The purpose of that supplement was manifestly to grant such exemption. It is settled, however, that under the amendatory provision of the Constitution adopted in 1875, requiring property to be assessed for taxes "under general laws and by uniform rules, according to its true value," there can be no exemption of property from taxation by force of special or local statutes, except in the case of contracts which the amendment of the organic law could not reach.

Sisters of Charity v. Township of Chatham, 23 Vr. p. 373. The effect of the General Tax Act of 1903, was to repeal all exemptions except these expressly allowed by that act, as far as the Legislature had the power to do so. Hanover Township v. Camp Meeting Asso. 68 Atl. 753. It follows, therefore, that the exemption claimed on this appeal has been annulled both by force of the Constitutional Amendment of 1875, and the operation of the act of 1903, unless the supplement granting the exemption constitutes an irrevocable contract between the State and the appellant. That the Legislature
19 may enter into an irrevocable contract as to taxation with a private corporation, which is not subject to alteration by a subsequent Legislature by virtue of the right reserved in the act of 1846, which is now section 4 of the Corporation Act (P. L. 1896, p. 277), is pointed out by Mr. Justice Swayze in the Hanover Township case. He cites the authorities establishing that rule and adds that "the question which arises is whether in any particular case the exemption, total or partial, is a mere gratuity or whether the elements of a binding contract are present. If the exemption is a mere gratuity, it is subject to repeal." If the act of the Legislature relied upon by the appellant constituted a binding contract, the exemption contended for must be allowed. If it was not such a contract then the claim for exemption must fail. The presumption is strongly against such a contract. It must be established by clear and positive evidence or be implied from circumstances which leave no other conclusion open to a rational mind. Little v. Bowers, 17 L. 300—State Board of Assessors vs. Paterson & Ramapo R. R. Co., 21 V. 447. In Cooper Hospital v. Camden, 39 Vr. p. 691, Mr. Justice Pitney, speaking for the Court of Errors and Appeals, held that "a contract that disables the State from exercising the sovereign prerogative of taxation, with respect to the property of a given corporation, is in derogation of common right, and, so far as it goes, is subversive of the power of government itself. Every reasonable intendment is against the existence of such a contract. He who comes into Court asserting its existence must be prepared to show that, in fact, it was made as alleged, and that its terms are such as to reasonably admit of no other interpretation than that claimed." The contract
20 claimed to exist in the case under review, does not arise from any provision in the original charter of the appellant corporation, but rests entirely upon a supplement to the act creating the corporation. This supplement was enacted long after the passage of the act of 1846, providing that the charter of every corporation thereafter granted should be subject to alteration, suspension and repeal, in the discretion of the Legislature. The right of exemption, therefore, is based upon a supplement to the charter passed at a time when the Legislature had expressly reserved to itself the right to alter, suspend or repeal every charter which it might thereafter grant. But even if it be in doubt whether the exempting statute was not subject to repeal by virtue of the act of 1846, the question still remains whether the former statute constituted an irrepealable contract. We are unable to give it that effect. There is nothing in the language or terms of the act itself from which a binding contract may be im-

plied. At the time of its passage the beneficiary of the act had been in existence for several years, had purchased lands, erected buildings and was carrying out the purpose of its incorporation. Conceding that its work was charitable, and that the Legislature might deem the continuance of such work a sufficient consideration for a contract of exemption from taxation, there is nothing to show that there was any prospect or likelihood of a discontinuance of such work if the Legislature should fail to grant tax immunity. The passage of the exempting act imposed no new burden or obligation upon the beneficiary, and it conferred no new benefit upon the State. True, the extension of the field of its operations by the appellant in consequence of its freedom from taxation, might increase the extent of its benefits to society, as an educational institution, but any such
21 extension was purely voluntary and was in no case a condition to the enjoyment of the tax exemption. In the case of Mount Pleasant Cemetery Co. v. Newark, 23 Vroom, p. 539, cited in appellant's brief, the Chief Justice, speaking for the Court of Errors and Appeals, said, "It must certainly be conceded that if an exemption from any public burthen be made as a mere privilege, it may at any time be revoked; such a concession would be purely nudum pactum, and as such would not be legally binding."

In our opinion, the exempting act relied upon by the appellant in the case under review in no case purported an intention to impose upon the State an irrepealable contractual obligation, but was a gratuitous privilege extended by the public to the corporation, and was subject to revocation. That being our view, it necessarily follows that we must sustain the assessment brought before us by this appeal.

FRANK B. JESS, *President.*

Endorsed: 4892. State of New Jersey. Board of Equalization of Taxes. In the matter of the appeal of Seton Hall College from the assessment of property in the Village of South Orange, County of Essex, for the year 1911. Memorandum. Filed, September 17, 1912.

22 STATE OF NEW JERSEY:

Board of Equalization of Taxes.

In the Matter of Appeal of SETON HALL COLLEGE from the Assessment of Property in South Orange, County of Essex, for the Year 1911.

Judgment.

An appeal in writing having been filed with the said Board of Taxation, duly verified according to the rules of practice prescribed by said Board, by Seton Hall College, a corporation organized and existing under and by virtue of a special Act of the Legislature of the State of New Jersey, and the Supplement thereto, which Supplement is entitled, "Supplement to an Act to Incorporate Seton Hall

College, approved March 8th, 1861," said Supplement being approved March 16th, 1870, in which it is alleged that an injustice has been done the said complainant by the assessment of its property for taxation for the year 1911, located at South Orange, in the County of Essex consisting of the following tracts of land: tracts 126 to 200, inclusive, on plate 15, and tracts 1 to 25, inclusive, on plate 17 of the assessment map of the Village of South Orange, said land and premises being situate on South Orange Avenue, in the said taxing district of South Orange, and that said property was assessed erroneously, and such assessment made through error and mistake for the reason that said property is exempt by law from taxation and was always heretofore listed as exempt by the Assessor;

23 After consideration of the state of facts agreed upon by counsel for said complainant and for said Village of South Orange, and after hearing the argument of John Griffin and William J. Kearns, Attorneys for the complainant, and Wilbur A. Mott, Attorney for the Village of South Orange, and after considering the same; It is, on this Seventeenth day of September, 1912, at a session of the State Board of Taxation, ordered that the judgment of this Board, entered in this matter on the 18th day of April, 1912, by consent of Joseph Arnold, Assessor of said Village of South Orange, by which it was declared that the said property was exempt from taxation and by which the said assessment was cancelled and annulled upon the ground that the said assessment was made through error and mistake, be and the same is hereby opened, revoked and set aside;

And it is further hereby ordered, adjudged and decreed that the said assessment of $35,500 upon the premises of the Complainant, mentioned in said appeal, for the year 1911, be and the same is hereby sustained and affirmed;

And it is further ordered, that this Order be certified to the Collector of the Village of South Orange, County of Essex.

FRANK B. JESS, *President,*
B. H. MINCH,
EDWARD E. GROSSCUP,
GEORGE M. McCARTHY,
ALFRED T. HOLLEY,
Board of Equalization of Taxes.

Attest:
HENRY W. BUXTON, *Clerk.*

24 Endorsed: 4892c. Board of Equalization of Taxes of New Jersey. Seton Hall College vs. Village of South Orange. Essex County, New Jersey. Judgment of Board of Equalization of Taxes of New Jersey. Wilbur A. Mott, Att'y for Village of South Orange.

Minutes County Board Rooms, Hackensack, New Jersey, Thursday, April 18, 1912.

The Board met at 10 A. M., for the purpose of hearing appeals.

Present, President Jess, Mr. McCarthy, Mr. Minch, Mr. Grosscup and Mr. Holley.

The Clerk laid before the Board a proposed form of judgment submitted by William J. Kearns, counsel for the petitioners, in the appeal of Seton Hall College vs. Village of South Orange, County of Essex. Mr. Joseph Arnold, Assessor of South Orange, consented in writing to the entry of this judgment, cancelling the assessment of $35,500, levied for the year 1911 on property consisting of tracts 126 to 200, inclusive, on Plate 15, and tracts 1 to 25, inclusive, on Plate 17 of the assessment map of South Orange Village, on the ground that this property was assessed in error and had always heretofore been listed as exempt by the assessor. After considering the facts submitted, the Board ordered judgment entered in accordance with such consent.

25 STATE HOUSE, TRENTON, NEW JERSEY,
TUESDAY, June 11, 1912.

The Board met at 10:30 A. M.

Present, President Jess, Mr. McCarthy, Mr. Minch, and Mr. Holley.

Mr. Wilbur A. Mott, Attorney for the Village of South Orange and Mr. Jerome T. Congleton, President of the Essex County Board of Taxation appeared before the Board and applied to have the judgment reopened in the case of Seton Hall College vs. Village of South Orange, entered April 18, 1912. Mr. Griffin and Mr. William J. Kearns were present in behalf of Seton Hall College. The Board heard the argument of counsel, and ordered the matter continued to July eleventh, counsel to file briefs and a statement of facts.

STATE HOUSE, TRENTON, NEW JERSEY,
TUESDAY, July 9, 1912.

The Board met at 10:30 A. M.

Present, President Jess, Mr. Minch, and Mr. McCarthy.

On motion of Mr. Minch all matters coming before the Board in Newark on July eleventh were referred to President Jess and Mr. McCarthy, to hear and report back to the Board.

CITY HALL, NEWARK, NEW JERSEY,
THURSDAY, July 11, 1912.

Present Jess and Mr. McCarthy were present at the City Hall, on this date to hear matters referred to them at the meeting of
26 the Board held July 9, 1912. Mr. John Griffin and Mr. William J. Kearns, for Seton Hall College, and Judge Jay Ten Eyck, on behalf of Mr. Wilbur A. Mott, representing the Village of South Orange, appeared before the Board and filed briefs, affidavit and stipulation in the matter of Seton Hall College vs. Village of South Orange, in which application for a re-opening of the case was made by the Village of South Orange, June 11, 1912.

STATE HOUSE, TRENTON, NEW JERSEY,
TUESDAY, September 17, 1912.

The Board met at 10:30 A. M.

Present, President Jess, Mr. Minch, and Mr. McCarthy.

The Board took up for consideration the application for the re-opening of the case of Seton Hall College vs. Village of South Orange, which application was argued before the Board at Trenton on June 11, 1912, also the briefs, etc., submitted in this case on July 11, 1912, and subsequent dates. The application was granted and the judgment was opened. After consideration of the briefs, etc., submitted by counsel, the Board ordered that the assessment of $35,500, levied for the year 1911 on property in the Village of South Orange, described as tracts 126 to 200, inclusive, on plate 15, and tracts 1 to 25 inclusive on plate 17 of the assessment map of said Village, be affirmed and the appeal therefrom dismissed. A memorandum was filed, setting forth the grounds on which this decision was based.

27 *Docket.*

4892.

SETON HALL COLLEGE, Petitioner,
vs.
VILLAGE OF SOUTH ORANGE, CO. OF ESSEX, Respondent.

1912.

Pet'r's Att'y Wm. J. Kearns.
Resp'd't's Att'y Wilbur A. Mott.

Assessment of 1911.

Property: Tracts 126 to 200, incl., plate 15, and tracts 1 to 25, incl., plate 17, South Orange Ave.

Amount, $35,500. Judgment, $35,500.

March 29, Petition filed.
April 18, Judgment by consent entered, cancelling assessment.
June 11, Argument heard on application to reopen judgment; continued to July 11, briefs to be filed.
July 11, Briefs submitted.
September 17, Memorandum filed and judgment affirming assessment entered.

STATE OF NEW JERSEY:

Board of Equalization of Taxes of New Jersey.

I, Henry W. Buxton, Clerk of the Board of Equalization of Taxes of New Jersey, do hereby Certify that the foregoing are true copies of the petition, judgments, memorandum, affidavit, stipulation and proceedings in the matter of the appeal of Seton Hall College, from the assessment of property in the Village of South Orange,
28 County of Essex, for the year 1911, as the same are taken from and compared with the originals filed in the office of the Board of Equalization of Taxes of New Jersey, on the twenty-ninth day of March and other dates, A. D. 1912, and now remaining on file and of record therein.

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of the Board, at Trenton, this eighth day of January, A. D. 1913.

[L. S.] HENRY W. BUXTON, *Clerk.*

New Jersey Supreme Court.

SETON HALL COLLEGE, a Corporation, Prosecutor,
vs.
VILLAGE OF SOUTH ORANGE, Joseph Arnold, Assessor and Collector of Taxes in the Village of South Orange, County of Essex and Board of Equalization of Taxes of New Jersey, Defendants.

On Certiorari.

To the Honorable the Justices of the Supreme Court of Judicature of New Jersey:

I, Joseph Arnold, Assessor and Collector of Taxes in the Village of South Orange, in the County of Essex, in obedience to the command of the writ hereto annexed to me directed do hereby
29 certify and send to you, the said Justices, the assessment of taxes made against Seton Hall College, a corporation, for the year Nineteen Hundred and Eleven, by me who was the Assessor of Taxes in the sail Village of South Orange, with all things touching and concerning the same as fully and entirely as the same remain in my hands and possession as by the said writ I am commanded, to wit:

I do certify and return that I did assess for taxes for the year

Nineteen Hundred and Eleven, as appears by the official books of record of my office, the following described lands and property of Seton Hall College, a corporation, to-wit: Tracts 126 to 200 inclusive, on Plate 15, and Tracts 1 to 25 inclusive, on Plate 17 of the Assessment Map of the Village of South Orange, said lands and property being in the taxing district of the said Village, and I do further certify and return that the said lands and property were assessed by me for taxes for the year Nineteen Hundred and Eleven, as and of the value of Thirty Five Thousand Dollars, together with an assessment on the outbuildings situated thereon of Five Hundred Dollars.

In witness whereof, I have hereto set my hand and seal this thirteenth day of January, A. D. 1913.

JOS. ARNOLD,
Assessor and Collector of Taxes.

30 New Jersey Supreme Court.

SETON HALL COLLEGE, a Corporation, Prosecutor,
vs.
VILLAGE OF SOUTH ORANGE, Joseph Arnold, Assessor and Collector of Taxes in the Village of South Orange, County of Essex, and Board of Equalization of Taxes of New Jersey, Defendants.

Reasons.

The said Prosecutor, by William J. Kearns, its Attorney, comes and prays that the assessment of taxes made against it by the Assessor of Taxes in the Village of South Orange, in the County of Essex, for the year Nineteen Hundred and Eleven, may be set aside and reversed, and that the decision and judgment of the State Board of Equalization of Taxes for New Jersey, dismissing the appeal of the Prosecutor and affirming the said assessment of taxes, be reversed for the following reasons:

1. The Prosecutor, a corporation organized for educational purposes under a supplement to its charter entitled "Supplement to an act to incorporate Seton Hall College," approved March 8th, 1861; which supplement was approved March 16th, 1870, obtained an irrepealable exemption from taxation.

2. That since its creation in the year 1861, until the year 1911, no assessment of taxes was ever levied or attempted to be levied upon the property of the prosecutor.

31 (5*a*) That the judgment, decision or determination of the Board of Equalization of Taxes for New Jersey that the property of this prosecutor is taxable is in violation of article 1, section 10, of the Constitution of the United States, by impairing the obligation of the contract arising out of the grant, acceptance and exercise of the charter powers conferred upon the prosecutor.

(5*b*) That the judgment, decision or determination of the Board of Equalization of Taxes for New Jersey that the property of the prosecutor is taxable under an act entitled "An act for the assess-

ment and collection of taxes," approved April 8th, 1903 (Laws 1903, p. 394, Chapter 208, and the supplements thereto and amendments thereof) violates article 1, section 10, of the Constitution of the United States, by impairing the obligation of the contract arising out of the grant, acceptance and exercise of the charter powers conferred upon the prosecutor.

(5c) That if the act entitled "An act for the assessment and collection of taxes," approved April 8th, 1903 (Laws 1903, page 394, chapter 208, and the supplements thereto and amendments thereof), properly construed provides that the property, real and personal, of the prosecutor is taxable, then it violates article 1, section 10, of the Constitution of the United States, in that it impairs the obligation of the contract arising out of the grant, acceptance and exercise of the charter powers conferred upon the prosecutor.

I hereby consent that the reasons already filed may be amended by inserting the above additional reasons and filed as within time.

WILBUR A. MOTT,
Attorney for Village of South Orange.

32 3. That the prosecutor accepted its said charter and the supplement thereto, and in consideration thereof purchased real and personal property from time to time, erected college buildings thereon and continuously, since, has been and still is actively engaged in carrying out the purposes of its creation and fulfilling its charter obligations, and after the supplement to its charter was passed in 1870, in consideration thereof, purchased further lands and erected further buildings.

4. That the said charter exemption from taxation is not a mere gratuity in the case of the prosecutor, but a contract in which the necessary element of a consideration is present, the prosecutor having performed service and duty, and made expenditures as a consequence of the exercise of the privileges and franchises conferred upon it by said legislation, and its legislative exemption from taxation is, therefore, irrepealable.

5. Because the said tax was erroneously and illegally levied and assessed against the property of the said prosecutor, and because the decision and judgment of the State Board of Equalization of Taxes in the matter of the appeal of the said assessment is unjust, illegal and erroneous.

6. Because the said decision and judgment of the State Board of Equalization of Taxes are incorrect and erroneous inasmuch as it was proved that the said educational institution, the prosecutor, was conducted without profit and should be considered as charitable at the common law, and therefore, the said land should be exempted from taxation as necessary for the fair use and enjoyment of the buildings erected thereon, and for the purposes of the institution under the facts as stipulated, and under the affidavit of the
33 Right Rev. James F. Mooney, which it was agreed should be used as evidence without the cross examination of the affiant, which was expressly waived in writing by the attorney of the said taxing district.

7. And because, in other respects, the said opinion and judgment of the State Board of Equalization of Taxes, are erroneous and illegal.

WM. J. KEARNS,
Attorney for Prosecutor.

New Jersey Supreme Court.

SETON HALL COLLEGE, a Corporation, Prosecutor,
vs.
VILLAGE OF SOUTH ORANGE, Joseph Arnold, Assessor and Collector of Taxes in the Village of South Orange, County of Essex, and Board of Equalization of Taxes of New Jersey, Defendants.

On Certiorari.

Stipulation.

It is stipulated and agreed by and between the attorneys and counsel of the respective parties herein, that the stipulations and agreements of counsel used on the argument of Seton Hall College
34 vs. the Village of South Orange, on appeal before the said Board of Equalization of Taxes, shall be taken and accepted as a true statement of the facts involved in this controversy.

WILBUR A. MOTT,
Att'y, Village South Orange.

Dated January 13, 1913.

WILLIAM J. KEARNS,
Att'y for Prosecutor.

New Jersey Supreme Court.

SETON HALL COLLEGE, Prosecutor,
vs.
VILLAGE OF SOUTH ORANGE, Joseph Arnold, Assessor and Collector of Taxes in the Village of South Orange, in the County of Essex, and Board of Equalization of Taxes of New Jersey, Defendants.

On Certiorari.

Order to Stay Sale.

A writ of Certiorari having been allowed by me in open Court on December 21, 1912, to review the assessment of taxes for the year 1911 of certain property of the prosecutor situate in the taxing district of the Village of South Orange; and it appearing that the lien for said taxes is about to be enforced by the Assessor and Collector of said taxing district,

It is hereby ordered that said writ of certiorari shall operate to stay the enforcement by sale of said lien, until the further order of this Court.

SAMUEL KALISCH, *J. S. C.*

35 New Jersey Supreme Court.

SETON HALL COLLEGE, Prosecutor,
vs.
THE VILLAGE OF SOUTH ORANGE and BOARD OF EQUALIZATION OF TAXES OF NEW JERSEY, Defendants.

On Certiorari.

Rule Dismissing Writ.

A writ of certiorari having been heretofore allowed in the above entitled cause, to review the judgment of the Board of Equalization of Taxes of New Jersey, affirming the decision of the Essex County Board of Taxation that the property of the prosecutor is subject to taxation; and it appearing to the court that the said decision of the Board of Equalization of Taxes of New Jersey is in all respects proper and just, and that the same should be affirmed;

It is, on this first day of November, 1913, on motion of Wilbur A. Mott, attorney of defendant, Village of South Orange, ordered, that said writ be and the same is hereby dismissed nunc pro tunc as of the 16th day of June, 1913.

Entered Nov. 1, 1913, on motion of Riker & Riker, Atty's for Defendants.

36 New Jersey Supreme Court.

SETON HALL COLLEGE, Prosecutor,
vs.
THE VILLAGE OF SOUTH ORANGE and BOARD OF EQUALIZATION OF TAXES OF NEW JERSEY et als., Defendants.

On Certiorari.

Notice of Appeal.

To Adrian Riker, Esq., Attorney for the Village of South Orange, Defendant:

Take notice, that the prosecutor appeals from the whole of the judgment entered in this cause on the following grounds:

1. Because the judgment of the Supreme Court is in violation of Article 1., section 10 of the Constitution of the United States, by impairing the obligation of the contract arising out of the grant, acceptance and exercise of the charter powers conferred upon the prosecutor, by terms of which contract the prosecutor was exempted from assessment and from taxation.

2. Because the judgment of said Supreme Court affirming the decision of the State Board of Equalization of Taxes is erroneous in that it holds that the Legislative exemption from assessment and from taxation claimed by the prosecutor has been annulled both by

force of the Constitutional amendment of 1875, requiring property to be assessed for taxes under general laws and by uniform rules according to its true value, and the operation of the Act of 1903, entitled "An Act for the assessment and collection of taxes," approved April 8, 1903; and because if this Constitutional amendment and the tax act of 1903 properly construed provide that the property real and personal, of the prosecutor is taxable, then they violate Article 1, section 10, of the Constitution of the United States, in that they impair the obligation of the contract arising out of the grant, acceptance and exercise of the charter powers conferred upon the prosecutor.

37

3. That the judgment of the said Supreme Court holding that the property of the prosecutor is taxable under an Act entitled "An Act for the assessment and collection of taxes, approved April 8, 1903 (Laws 1903) p. 394, Chapter 208, and the supplements thereto and amendments thereof violates article 3, section 7, paragraph 3 of the Constitution of the State of New Jersey and also violates article 1, section 10, of the Constitution of the United States, by impairing the obligation of the contract arising out of the grant, acceptance and exercise of the charter powers conferred upon the prosecutor.

4. Because the Prosecutor, a corporation organized for educational purposes under a supplement to its charter entitled "Supplement to an Act to incorporate Seton Hall College approved March 8, 1861," which supplement was approved March 16, 1870, obtained an irrepealable exemption from assessment and from taxation; and since its creation in the year 1861 until the year 1911 no assessment for taxes was ever levied or attempted to be levied upon the property of the prosecutor, and the judgment of the Supreme Court holding such Legislative exemption to be repealable is erroneous.

5. Because the prosecutor performed service and duty and made expenditures as a consequence of the exercise of the privileges and franchises conferred upon it by said Legislation, and has been and still is actively engaged in carrying out the purpose of its creation and fulfilling its charter obligations, and therefore the said charter exemption from assessment and from taxation is not a mere gratuity, but a contract in which the necessary element of a consideration is present.

38

WM. J. KEARNS,
Att'y for Appellant.

Dated Oct. 17, 1913.

[Endorsed:] New Jersey Supreme Court. Seton Hall College, Prosecutor, vs. Village of South Orange and Board of Equalization of Taxes of New Jersey, et als., Defendants. On Certiorari. Notice of Appeal. Wm. J. Kearns, Att'y for Appellant, 800 Broad St., Newark, N. J. Service of the within Notice of Appeal is hereby acknowledged this 18th day of October, A. D. 1913. Riker & Riker, Adrian Riker, Att'y for Village of South Orange. Filed Nov. 1, 1913. Wm. C. Gebhardt, Clerk.

39 New Jersey Court of Errors and Appeals, March Term, 1914.

SETON HALL COLLEGE, Prosecutor, Appellant,
vs.
VILLAGE OF SOUTH ORANGE et als., Defendants, Respondents.

On Appeal from Supreme Court.

Remittitur.

This cause having been duly argued at the March Term of this court by William J. Kearns, attorney for the prosecutor, appellant, and Riker & Riker, attorneys for the defendants, respondents, and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court;

It is thereupon ordered and adjudged, that the judgment of the Supreme Court, removed by the writ of error in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

On motion of Riker & Riker, Attorneys for defendants, respondents.

RIKER & RIKER,
Attorneys of Defendants, Respondents.

I consent to the form of the foregoing remittitur.

WM. J. KEARNS,
Attorney of Prosecutor, Appellant.

Endorsed: "Filed Jul- 23, 1914. David S. Crater, Clerk."

40 STATE OF NEW JERSEY,
Department of State:

I, David S. Crater, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby Certify that the foregoing is a true copy of remittitur,—Between: Seton Hall College, Prosecutor, Appellant, vs. Village of South Orange, et als., Defendants, Respondents, as the same is taken from and compared with the original Filed Jul- 23, 1914, and now remaining on file in my office.

[SEAL.]

In Testimony Whereof, I have hereunto set my hand and affixed the Official Seal of said Court at Trenton, this Twenty-fourth day of July, A. D. 1914.

DAVID S. CRATER,
Secretary of State.

[Endorsed:] New Jersey Court of Errors and Appeals. Between Seton Hall College, Prosecutor, Appellant, vs. Village of South Orange, et als., Defendants, Respondents. Copy of Remittitur. Filed Aug. 14, 1914. Wm. C. Gebhardt, Clerk.

41 I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the proceedings brought up by the writ of certiorari in the above stated cause and of the rule dismissing said writ of certiorari, which said proceedings were sent to the Court of Errors and Appeals by virtue of a Notice of Appeal filed in this office, a copy of which is hereto attached; also of the remittitur from said Court of Errors and Appeals, as the same remain on file and of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this second day of March, A. D. nineteen hundred and fifteen.

[Seal of the Supreme Court.]

WM. C. GEBHARDT, *Clerk.*

42 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of New Jersey, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court on a remittitur from the Court of Errors and Appeals of the State of New Jersey, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Seton Hall College, a corporation, Prosecutor, and Village of South Orange, in Essex County, New Jersey, and Board of Equalization of Taxes of New Jersey, Respondents, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right, privilege, or immunity was claimed under the Constitution,

43 or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision was against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, statute, commission, or authority; a manifest error hath happened to the great damage of the said Prosecutor, Seton Hall College, a corporation, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may

cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the ninth day of February, in the year of our Lord one thousand nine hundred and fifteen.

JAMES D. MAHER,
Clerk of the Supreme Court
of the United States.

Allowed by

MAHLON PITNEY,
Associate Justice of the Supreme
Court of the United States.

44 The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Supreme Court of the United States, in a certain schedule to this writ annexed, as within we are commanded.

[Seal of the Supreme Court.]

WM. S. GUMMERE, *C. J.*

[Endorsed:] Supreme Court of the United States, October Term, 1914. Seton Hall College vs. Village of South Orange et al. Writ of Error.

45 Know all Men by these Presents, That we, Seton Hall College, a corporation organized and existing under the laws of the State of New Jersey, as principal, and James E. Bathgate and James Smith, Jr., of the city of Newark, in Essex County, New Jersey, as sureties, are held and firmly bound unto Village of South Orange, in Essex County and in said State of New Jersey, in the full and just sum of Three Hundred dollars, to be paid to the said Village of South Orange, or to its certain attorney, successors, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this sixth day of February, in the year of our Lord one thousand nine hundred and —.

Whereas, lately at a stated term of the New Jersey Court of Errors and Appeals, to wit, at March term, 1914, in a suit depending in said Court, between Seton Hall College, a corporation as aforesaid, Prosecutor-plaintiff-in-error, and said Village of South Orange, and Board of Equalization of Taxes of New Jersey, respondents, defendants-in-error, a final judgment was rendered against the said Seton Hall College, plaintiff-in-error, affirming the judgment of the New Jersey Supreme Court, and the said Seton Hall College, having obtained Writ of Error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Village of South Orange and Board

of Equalization of taxes of New Jersey, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Seton Hall College, a corporation as aforesaid, shall prosecute said Writ to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

SETON HALL COLLEGE, [SEAL.]
By JAMES F. MOONEY, *President.*
JAMES E. BATHGATE. [SEAL.]
JAMES SMITH, JR [SEAL.]

Sealed and delivered in presence of—
MARY M. CAFFREY.
E. F. MAGUIRE.
WM. J. KEARNS.

The words "Successors" interlined & "executors administrators" stricken out before execution.

Approved by—
MAHLON PITNEY,
Associate Justice of the Supreme Court of the United States.

A true copy.

WM. C. GEBHARDT, *Clerk.*

46 STATE OF NEW JERSEY,
Essex County, ss:

James E. Bathgate and James Smith, Jr., the sureties named in the annexed Bond being duly sworn, on their oath say that they are residents of the County of Essex and State of New Jersey, and that they are each worth in his own right, Three Thousand dollars in real estate, situate within the State of of New Jersey, in their own right, in fee over and above all just debts and liabilities existing against them and over and above all encumbrances on said real estate.

JAMES E. BATHGATE.
JAMES SMITH, JR.

Sworn and subscribed before me this 8th day of February, A. D. 1915.

[SEAL.] WM. J. KEARNS,
Notary Public in and for New Jersey.

A true copy.
WM. C. GEBHARDT, *Clerk.*

47 [Endorsed:] 856/24,600. Seton Hall College, plaintiff-in-error, vs. Village of South Orange, et al., def'd'ts-in-error. Bond on allowance of Writ of Error. Wm. J. Kearns, Att'y for pl't'ff-in-error, 800 Broad St., Newark, N. J.

48 UNITED STATES OF AMERICA, *ss:*

To Village of South Orange, in Essex County, New Jersey, and Board of Equalization of Taxes of New Jersey, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of New Jersey wherein Seton Hall College, a corporation is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Mahlon Pitney, Associate Justice of the Supreme Court of the United States, this ninth day of February, in the year of our Lord one thousand nine hundred and fifteen.

MAHLON PITNEY,
Associate Justice of the Supreme Court of the United States.

49 On this 17th day of February, in the year of our Lord one thousand nine hundred and fifteen, personally appeared William J. Kearns, before me, the subscriber, a Notary Public in and for the State of New Jersey, and makes oath that he delivered a true copy of the within citation to Adrian Riker, Attorney for the Village of South Orange, on the 13th day of February, 1915

WM. J. KEARNS.

Sworn to and subscribed the 17th day of February, A. D. 1915.
[NOTARIAL SEAL.] JAMES J. GIBBS,
Notary Public for New Jersey.

[Endorsed:] Service of the within citation is admitted and appearance entered for the Village of South Orange. Feb'y 13, 1915. Adrian Riker, Att'y for the said Village. Due and legal service of the within citation is hereby acknowledged this fifteenth day of February, nineteen hundred and fifteen. Board of Equalization of Taxes of New Jersey, by Frank B. Jess, President.

Endorsed on cover: File No. 24,600. New Jersey Supreme Court. Term No. 382. Seton Hall College, plaintiff in error, vs. Village of South Orange, in Essex County, New Jersey, and Board of Equalization of Taxes of New Jersey. Filed March 4th, 1915. File No. 24,600.

United States Supreme Court.

SETON HALL COLLEGE, Plaintiff-in-Error,
vs.
VILLAGE OF SOUTH ORANGE et als., Defendants-in-Error.

On Writ of Error.

It is stipulated and agreed between the attorneys of the respective parties hereto that the annexed Opinion of the New Jersey Court of Errors and Appeals, together with the annexed stipulation and agreement may be inserted in the Transcript of Record herein, and the Clerk of the Supreme Court of the United States is hereby requested to print the annexed Opinion, stipulation and agreement in the said record.

WM. J. KEARNS,
Att'y for Plaintiff-in-Error.
ADRIAN RIKER,
Att'y for Defendant-in-Error.

N. J. Court of Errors and Appeals.

SETON HALL COLLEGE, a Corporation, Prosecutor-Appellant,
vs.
VILLAGE OF SOUTH ORANGE et al., Defendants-Respondents.

Submitted Mar. 23, 1914; Decided June 15, 1914.

On Appeal from the Supreme Court.

For the prosecutor-appellant, William J. Kearns.
For the defendants-respondents, Riker & Riker.

Per Curiam:

The prosecutor (Seton Hall College) appealed from a judgment of the Supreme Court dismissing a writ of certiorari allowed by that court to review the judgment of the board of equalization of taxes of New Jersey, affirming the decision of the Essex county board of taxation, that certain property of the prosecutor-appellant was subject to taxation, and as to which property an exemption from taxation was claimed.

The Supreme Court affirmed the judgment of the board of equalization of taxes in a per curiam which reads as follows:

"The stipulation of facts shows that prosecutor was incorporated under special charter by chapter 86 of the laws 1861. Pamph. L., p. 198. This charter conferred no exemption from taxation.

"By chapter 167 of the laws of 1870, an amendment to said charter, it was provided:

" 'That the provisions of the fifth section of an act entitled "An act to incorporate the Drew Theological Seminary of the Methodist Episcopal Church," approved February 12th, 1868, in relation to the exemption of the real and personal property of said corporation from assessment and from taxation, be and the same are hereby extended to the corporation created by the act to which this is a supplement.'

"The provision in the fifth section of the charter of Drew Theological Seminary (Pamph. L. 1868, p. 4) reads as follows: 'And the property of said corporation, real and personal, shall be exempt from assessment and from taxation.'

"It further appears, inter alia, that Seton Hall College is an educational institution and has been operating as such under its charter since 1861; and that it acquired the lands on which the tax was imposed in 1864; and that no tax was levied against it until the one now in question, for 1911. The exemption is claimed by virtue of the legislation cited above and not by virtue of section 4 of the Tax act of 1903.

"The board of equalization of taxes in affirming the tax filed a memorandum, which, after reciting the above facts proceeds as follows:

" 'The property involved in this case consists of tracts of land situated in the taxing district of the Village of South Orange and owned by Seton Hall College. These tracts do not include the land upon which the college buildings are erected. The question to be decided is whether the property involved is exempt from taxation by virtue of the supplement to the act under which the appellant was incorporated. The purpose of that supplement was manifestly to grant such exemption. It is settled, however, that under the amendatory provisions of the constitution adopted in 1875, requiring property to be assessed for taxes "under general laws and by uniform rules, according to its true value," there can be no exemption of property from taxation by force of special or local statutes, except in the case of contracts which the amendment of the organic law could not reach. Sisters of Charity v. Township of Chatham, 52 N. J. L. 373. The effect of the General Tax act of 1903 was to repeal all exemptions except those expressly allowed by that act, as far as the legislature had the power to do *do*. Hanover Township v. Camp Meeting Association, 76 Id. 65; — Id. 827. It follows, therefore, that the exemption claimed on this appeal has been annulled both by force of the constitutional amendment of 1875 and the operation of the act of 1903, unless the supplement granting the exemption constitutes an irrevocable contract between the state and the appellant. That the legislature may enter into an irrevocable contract as to taxation with a private corporation, which is not subject to alteration by a subsequent legislature by virtue of the right reserved in the act of 1846, which is now section 4 of the Corporation act (Pamph. L. 1896, p. 277), is pointed out by Mr. Justice Swayze in the Hanover Township case. He cites the authorities establishing that rule and adds that "the question which arises is whether in any particular case the exemption, total or partial, is a mere gratuity or whether the elements of a binding contract are present. If the ex-

emption is a mere gratuity, it is subject to repeal." If the act of the legislature relied upon by the appellant constituted a binding contract, the exemption contended for must be allowed. If it was not such a contract, then the claim for exemption must fail. The presumption is strongly against such a contract. It must be established by clear and positive evidence or be implied from circumstances which leave no other conclusion open to a rational mind. Little v. Bowers, 46 N. J. L. 300; State Board of Assessors v. Paterson and Ramapo Railroad Co., 50 Id. 447. In Cooper Hospital v. Camden, 68 Id. 691, 695, Mr. Justice Pitney speaking for the Court of Errors and Appeals, held that "a contract that disables the state from exercising the sovereign prerogative of taxation, with respect to the property of a given corporation, is in derogation of common right, and, so far as it goes, is subversive of the power of government itself. Every reasonable intendment is against the existence of such contract. He who comes into court asserting its existence must be prepared to show that, in fact, it was made as alleged, and that its terms are such as to reasonably admit of no other interpretation than that claimed." The contract claimed to exist in the case under review does not arise from any provision in the original charter of the appellant corporation, but rests entirely upon a supplement to the act creating the corporation. This supplement was enacted long after the passage of the act of 1846, providing that the charter of every corporation thereafter granted should be subject to alteration, suspension and repeal, in the discretion of the legislature. The right of exemption, therefore, is based upon a supplement to the charter passed at a time when the legislature had expressly reserved to itself the right to alter, suspend or repeal every charter which it might thereafter grant. But, even if it be in doubt whether the exempting statute was not subject to repeal by virtue of the act of 1846, the question still remains whether the former statute constituted an irrepealable contract. We are unable to give it that effect. There is nothing in the language or terms of the act itself from which a binding contract may be implied. At the time of its passage the beneficiary of the act has been in existence for several years, had purchased lands, erected buildings and was carrying out the purpose of its incorporation. Conceding that its work was charitable, and that the legislature might deem the continuance of such work a sufficient consideration for a contract of exemption from taxation, there is nothing to show that there was any prospect or likelihood of a discontinuance of such work if the legislature should fail to grant tax immunity. The passage of the Exemption act imposed no new burden or obligation upon the beneficiary, and it conferred no new benefit upon the state. True, the extension of the field of its operations by the appellant in consequence of its freedom from taxation, might increase the extent of its benefits to society, as an educational institution, but any such extension was purely voluntary and was in no case a condition to the enjoyment of the tax exemption. In the case of Mount Pleasant Cemetery Co. v. Newark, 52 Id. 539, cited in appellant's brief, the Chief Justice, speaking for the Court of Errors and Appeals, said: "It must certainly be conceded that if an exemption from any public burthen be made as a mere privilege, it may at

any time be revoked; such a concession would be purely nudum pactum, and as such would not be legally binding."

"In our opinion, the Exempting act relied upon by the appellant in the case under review in no case purported an intention to impose upon the state an irrepealable contractual obligation, but was a gratuitous privilege extended by the public to the corporation, and was subject to revocation. That being our view, it necessarily follows that we must sustain the assessment brought before us by this appeal.' "

We concur in the opinion of the Supreme Court which adopted the opinion of the board of equalization of taxes, and the judgment appealed from will be affirmed, for the reasons stated in the board's opinion.

New Jersey Court of Errors and Appeals.

SETON HALL COLLEGE, Appellant,
vs.
VILLAGE OF SOUTH ORANGE, Appellee.

On Writ of Error.

Stipulation.

It is stipulated and agreed between the Attorneys of the respective parties to the above entitled action and proceeding that the judgment of the said court entered July 25, 1914, shall not be enforced against the appellant by advertisement and sale of the property against which the tax and assessment was levied pending a further appeal to the Supreme Court of the United States on the Federal questions involved and that the said tax and assessment shall be a valid and subsisting lien against the lands and premises assessed in the Village of South Orange, notwithstanding that no further proceeding shall be taken toward the collection of the same by advertisement and sale until the final disposition of the Writ of Error to be taken out of the Supreme Court of the United States.

WM. J. KEARNS,
Attorney for Appellant.
RIKER & RIKER,
Attorneys for Village of South Orange.

[Endorsed:] Copy. New Jersey Court of Errors and Appeals. Seton Hall College, Appellant, vs. Village of South Orange, Appellee. On Writ of Error. Stipulation as to non-enforcement of tax & assess't vs. College by adv. & sale pending U. S. Sup. Ct. decision.

Whereas, the judgment of the New Jersey Court of Errors and Appeals entered July 25, 1914, on Writ of Error in which Seton Hall College, a corporation, was the appellant and the Village of South Orange, the appellee, has been removed by a further Writ of Error issued out of the United States Supreme Court for the review

of said judgment entered against the appellant involving the taxes for the year 1911 assessed on the real estate of the appellant in the Village of South Orange;

And whereas, taxes and assessments for the years subsequent to 1911 have been assessed and levied by the Village of South Orange against the property of the appellant situate in the said Village;

And whereas it has been stipulated and agreed between the attorney for the appellant and the attorneys of the Village of South Orange that the said taxes and assessments shall not be enforced against the appellant by advertisement and sale of its property for the said taxes and assessments under review, or any tax and assessment levied subsequent to the year 1911, pending the final disposition of the said Writ of Error out of the Supreme Court of the United States on the Federal question involved, but shall be and remain valid and subsisting liens against the lands and premises so assessed in the Village of South Orange, notwithstanding that no proceeding shall be taken by said Village toward the collection of the same by advertisement and sale of the property so assessed pending such final judgment of the Supreme Court of the United States;

Now therefore, this agreement witnesseth, that for and in consideration of the stipulations and agreements hereinbefore recited and the holding in abeyance by the said Village of the taxes and assessments aforesaid the said Seton Hall College, a corporation of New Jersey, does hereby covenant, promise and agree to and with the said Village of South Orange to pay the amount of the said taxes with interest and costs, in case the Supreme Court of the United States shall decide that the charter of the said College, or the supplement thereto, does not contain a valid exemption of said Seton Hall College from taxation.

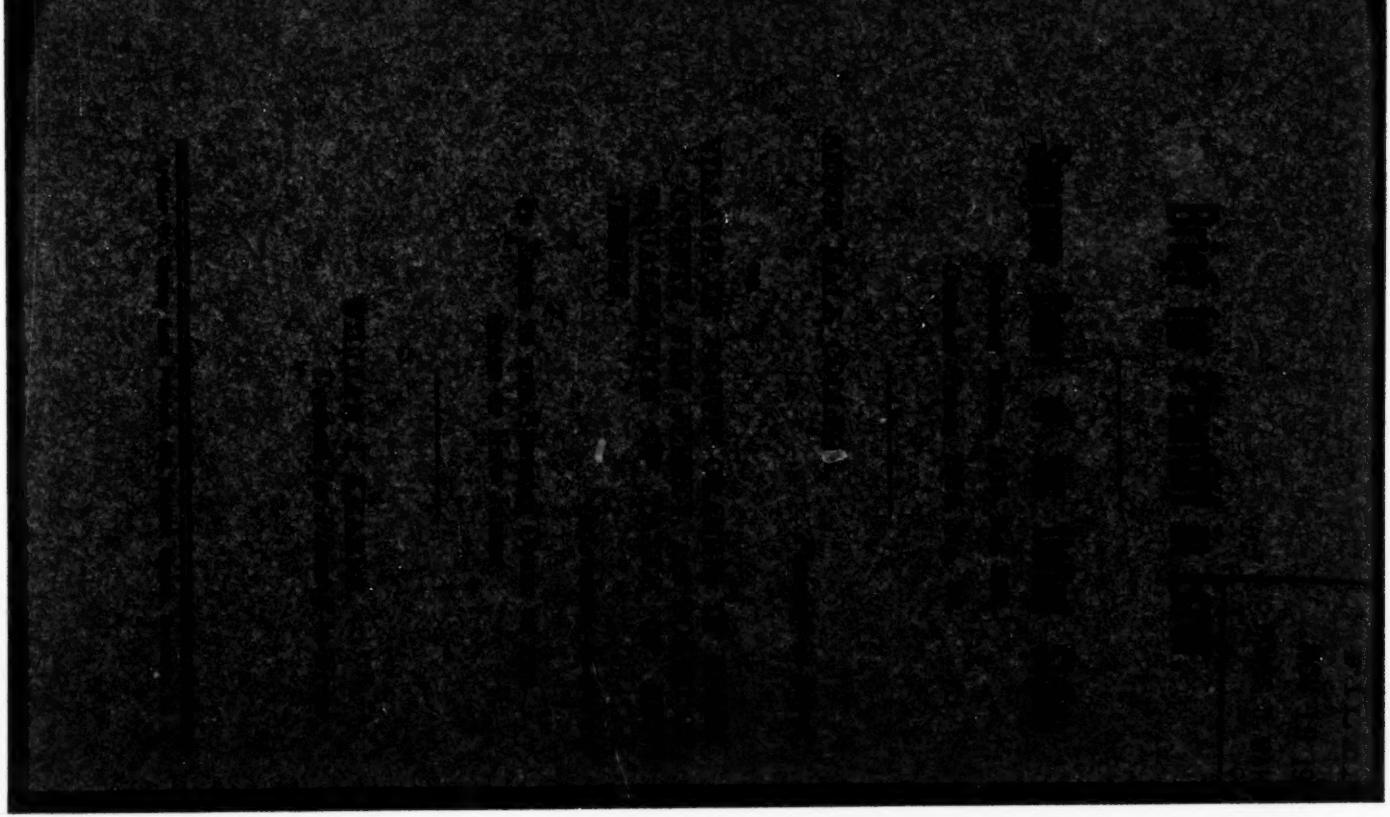
In witness whereof, Seton Hall College, has caused this agreement to be signed by its President and its corporate seal to be hereto attached this 29th day of September, A. D., 1915.

SETON HALL COLLEGE,
By JAMES F. MOONEY, *President.* [L. S.]

Signed, sealed and delivered in the presence of
WM. J. KEARNS.

[Endorsed:] 74-16/24,600. U. S. Supreme Court. Seton Hall College, Pl't'ff-in-Error, vs. Village of South Orange, et als., Def'ts-in-Error. On Writ of Error. Stipulation. Wm. J. Kearns, Counsellor-at-Law, 800 Broad St., Newark, N. J.

[Endorsed:] File No. 24,600. Supreme Court U. S. October term, 1916. Term No. 74. Seton Hall College, Pl'ff in Error, vs. Village of South Orange et al. Stipulation of counsel and addition to record. Filed September 1, 1916.



Supreme Court of the United States

October Term, 1915, No. 382.

October Term, 1916, No. 74.

SETON HALL COLLEGE, *Plaintiff in Error,* *vs.* VILLAGE OF SOUTH ORANGE, IN ESSEX COUNTY, NEW JERSEY, AND BOARD OF EQUALIZATION OF TAXES OF NEW JERSEY, *Defendants in Error.*	*In Error to the Supreme Court of the State of New Jersey.*

BRIEF FOR PLAINTIFF IN ERROR.

Statement.

This writ of error brings up a judgment (p. 19) of the New Jersey Supreme Court, which had been affirmed by the New Jersey Court of Errors and Appeals (p. 21), the highest court of law of the said state, and upon which affirmance the record had been remitted to the state Supreme Court (p. 21). The judgment of the state Supreme Court, thus affirmed, dismissed a writ of certiorari, by which there was reviewed the tax levied by the assessor of the Village of South Orange for the year 1911 upon certain real property of the plaintiff in error situate in said village, which property was assessed at a valuation of $35,500.00 (p. 2). From this assess-

ment the plaintiff in error had appealed to the Board of Equalization of Taxes of New Jersey, sitting in review, (p. 2) on the ground that the property was exempt from taxation under an Act of the Legislature of the State of New Jersey, approved March 16, 1870; and upon the confirmation of the assessment by said Board the same was removed by writ of certiorari (p. 1) to the New Jersey Supreme Court for further review.

The plaintiff in error was incorporated under a special act of the New Jersey legislature approved March 8, 1861, entitled "An Act to incorporate Seton Hall College" (N. J. Laws of 1861, p. 198). The object of the said corporation as expressed in the second section of its charter is declared to be "*the advancement of education.*" The sixth section of its charter provides, "that the said corporation shall have and possess the right and power of conferring the usual academic and other degrees granted by any other college in this state."

In 1870 there was enacted by the legislature a supplement to the said charter (N. J. Laws 1870, p. 596), which provided as follows: "That the provisions of the fifth section of an act entitled 'An act to incorporate the Drew Theological Seminary of the Methodist Episcopal Church,' approved February 12th, 1868, in relation to the exemption of the real and personal property of said corporation from assessment and from taxation, be, and the same are hereby extended to the corporation created by the act to which this is a supplement."

The provisions of the fifth section of the said act incorporating the Drew Theological Seminary, relating to exemption from taxation, read as follows: "And the property of said corporation, real and personal, shall be exempt from assessment and from taxation."

An amendment to the constitution of the State of New Jersey was adopted in 1875 providing as follows: "Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value."

In 1903 the legislature enacted a general tax law (4 N. J. Comp. St., p. 5079) which provided that all property not therein expressly exempted shall be subject to taxation, and that all acts, general and special, inconsistent with its provisions, are repealed.

The tax under review was sought to be levied by virtue of this legislation.

It appears from the stipulated facts in the case, that the plaintiff in error accepted its charter contained in the law as enacted in 1861, and thereafter purchased real and personal property, and erected college buildings thereon, and engaged in carrying out the purposes of its creation and in fulfilling its obligations imposed by its charter (p. 7); that after the supplemental act of 1870, exempting its property from taxation, the plaintiff in error accepted the same and erected further buildings, and has continued ever since to live up to the terms of both acts and carry out the purposes of its creation; that the lands covered by the assessment here sought to be set aside, with other lands, were acquired by a

conveyance dated October 17, 1864, and recorded February 21, 1865 (p. 7); that after March 16, 1870 (the date of approval of the exempting supplement), and before January 1, 1875, plaintiff in error erected buildings, barns, stables and dwellings on said lands, and also erected buildings on and improved its other adjacent lands (p. 6); that the said lands so assessed are used solely as pasture lands for cows, and the dwellings of the help on the farm; that the whole of the products of said lands, consisting of dairy products, is used exclusively at the table of said college; that without such products the college would be compelled to buy the same; that the same are essential and necessary to the use of the college, and that the college derives no pecuniary profit from the lands in question (p. 6).

It further appears from the stipulated facts, that since its creation the college of the plaintiff in error has been conducted for the advancement of learning, the education of youth, and the education and preparation of young men for the priesthood of the Catholic Church; that some of the students board on the premises and pay tuition and boarding fees, but that all of the receipts from these sources are used for the support and maintenance of the college, and for no other purpose; that some of the students, clerical and lay, in both the secular and ecclesiastical departments of the college, pay no tuition or boarding fees, but are educated as charity students; that the college does not conduct its business for profit, and no profit is derived therefrom (p. 6).

It further appears (p. 7, 8) that no assessment or tax has been levied or imposed upon the property, real or personal, of Seton Hall College from the date of its original charter in 1861 down to the year 1911, and that the tax in question, imposed in the year 1911, is the first tax attempted to be imposed up any property of said college.

The Court of Errors concurred in the opinion of the Supreme Court, which latter had adopted the opinion of the Board of Equalization of Taxes. This opinion determined that the statute of 1870 exempting the property of the plaintiff in error from taxation did not constitute an irrepealable contract.

The sole question in the case is the one thus determined adversely to the plaintiff in error by the state court, viz.: Did the said supplemental act of 1870 which was accepted by the plaintiff in error, constitute an irrepealable contract under the prohibitive clause of the United States Constitution?

Errors Assigned.

The assignment of errors in this case is as follows:

1. Because the judgment of the said Court of Errors and Appeals of New Jersey is in violation of Article 1, Section 10, of the Constitution of the United States, by impairing the obligation of the contract arising out of the grant, acceptance and exercise of the charter powers conferred upon the plaintiff in error, by the terms of which contract the plaintiff in error was exempted from assessment and from taxation.

2. Because the judgment of said New Jersey Court of Errors and Appeals, affirming the decision of the New Jersey Supreme Court, is erroneous in that it holds that the legislative exemption from assessment and from taxation claimed by the plaintiff in error has been annulled both by force of the State Constitutional amendment of 1875, requiring property to be assessed for taxes under General Laws and by uniform rules according to its true value, and the operation of the Tax Act of 1903, entitled "An act for the assessment and collection of taxes," approved April 8, 1903; and because if this constitutional amendment and the general tax act of 1903 properly construed provide that the property real and personal of the plaintiff in error is taxable, then they violate Article 1, Section 10, of the Constitution of the United States, in that they impair the obligation of the contract arising out of the grant, acceptance and exercise of the charter powers conferred upon the plaintiff in error.

3. Because the judgment of the Court of Errors and Appeals holding that the property of the plaintiff in error is taxable under an act entitled, "An act for the assessment and collection of taxes," approved April 8, 1903 (Laws 1903), p. 394, Chapter 208, and the supplements thereto and amendments thereof violates Article 1, Section 10, of the Constitution of the United States, by impairing the obligation of the contract arising out of the grant, acceptance and exercise of the charter powers conferred upon the plaintiff in error.

4. Because the plaintiff in error, a corporation organized for educational purposes, under a supplement to its charter, entitled "Supplement to an act to incorporate Seton Hall College, approved March 8, 1861," which supplement was approved March 16, 1870, obtained from the New Jersey Legislature an irrepealable exemption from assessment and from taxation; and since its creation in the year 1861, until the year 1911, no assessment for taxes was ever levied or attempted to be levied upon the property of the plaintiff in error, and the judgment of the said Court of Errors and Appeals holding such legislative exemption to be repealable is erroneous.

Point I.

The jurisdiction of this court to revise the judgment of the highest court of the state in this case cannot be doubted.

While it seems unlikely that the jurisdiction of this Court will be questioned, it may be well to call attention to the fact that it is well established that the Supreme Court of the United States has full power to revise the judgment of the supreme court of a state, whenever such a court shall have adjudged that not to be a contract which has been alleged, in the forms of legal proceedings, by a litigant, to be one, within the meaning of that clause of the Constitution of the United States which inhibits the states from passing any law impairing the obligation of contracts. This constitutes the single exception

to the rule that the constructions given by the highest courts of the state to state legislation are conclusive upon this court.

Jefferson Bank v. *Skelly*, 1 Black. 436

Douglas v. *Kentucky*, 168 U. S. 488, and cases therein cited.

University v. *People*, 99 U. S. 309, 321.

Point II.

The Statute of 1870 constitutes a contract exempting the property of plaintiff in error from taxation.

The statute of 1861 incorporated the plaintiff in error for the advancement of education, and authorized it to purchase and hold real and personal property, whether acquired by purchase, gift or devise. N. J. Laws 1861 pp. 198, &c.) The act of 1870 provided that "the property of said corporation, real and personal, shall be exempt from assessment and from taxation." (N. J. Laws, p. 596, incorporating therein, N. J. Laws 1868, p. 4, sec. 5.) Each of these statutes was accepted by plaintiff in error. After the passage of the act of 1861 plaintiff in error purchased real and personal property, erected buildings thereon and engaged in carrying out the objects of its creation (p. 7). After the enactment of the supplement of 1870, exempting its property from taxation, it incurred new expenditures and liabilities in erecting further buildings on the lands here assessed and in erecting buildings on and improving its other adjacent lands (p. 6). After

this latter enactment it continued its work of education of the youth, deriving no pecuniary profit therefrom, but operating as a benevolent or charitable institution (p. 6).

All of the elements of a contract are here present, parties, a subject matter, acceptance, and a consideration moving from both sides.

It is well settled that an exemption from taxation for a valuable consideration constitutes a contract within the meaning of the constitution.

Asylum v. *New Orleans,* 105 U. S. 362.
Home of the Friendless v. *Rouse,* 8 Wall. 430.
New Jersey v. *Wilson,* 7 Cranch, 164.
State Bank v. *Knoop,* 16 How. 363.
Wilmington Railroad v. *Reid,* 13 Wall. 264.
Humphrey v. *Pegues,* 16 Wall. 244.
Farrington v. *Tennessee,* 95 U. S. 679.
New Jersey v. *Yard,* 95 U. S. 104.

The consideration for the exemption, although not recited, was plainly the continuance of the conducting of the benevolent work, to wit, the advancement of education, already undertaken by plaintiff in error, the expenditure of further moneys in carrying on such work and the incurring of further expenditures in improving its property and in maintaining the same for the beneficent objects for which it had been created. It was just such a consideration as this court held sufficient in *Home of the Friendless* v. *Rouse, supra.* That was a case of an exemption granted in the charter of an institution to afford relief to destitute and suffering

persons. It was objected that there was no consideration stated in the statute for the release from taxation. Mr. Justice Davis says in the opinion (p. 437):

> "*There is no necessity of looking for the consideration for a legislative contract outside of the objects for which the corporation was created.* These objects were deemed by the legislature to be beneficial to the community, and *this benefit constitutes the consideration for the contract, and no other is required to support it.* This has been the well settled doctrine of this court on this subject since the case of *Dartmouth College* v. *Woodward.*"

This extract from the opinion in *Home of the Friendless* v. *Rouse,* is quoted with approval by this court in *Powers* v. *Detroit & Grand Haven Ry.,* 201 U. S. 543, at page 558, in an opinion by Mr. Justice Brewer.

In the *Home of the Friendless* case Mr. Justice Davis further pointed out (8 Wall. at p. 438), that:

> "It is equally well settled that the exemption *is presumed to be on sufficient consideration, and binds the state if the charter containing it is accepted,*" citing *New Jersey* v. *Wilson,* 7 Cranch, 164; *Gordon* v. *Appeal Tax Court,* 3 Howard, 133; *Piqua Bank* v. *Knoop,* 16 Id. 369; *Ohio Life and Trust Co.* v. *Debolt,* 16 Id. 416; *Dodge* v. *Woolsey,* 18 Id. 331; *Mechanics' and Traders' Bank* v. *Thomas,* Ib. 384; *Mechanics'*

and Traders' Bank v. *Debolt,* Ib. 380; *McGee* v. *Mathis,* 4 Wallace, 143.

The Board of Equalization of Taxes of New Jersey, the opinion of which in this case was adopted by the state Supreme Court and the Court of Errors and Appeals, apparently entertained a different idea as to what constitutes a consideration for an exemption of this character. It held that the act of 1870 did not constitute a "binding contract." It said (Addendum to Record, p. 3):

> "At the time of its passage the beneficiary of the act has (had) been in existence for several years, had purchased land, erected buildings and was carrying out the purpose of its incorporation. Conceding that its work was charitable, *and that the legislature might deem the continuance of such work a sufficient consideration for a contract of exemption from taxation,* there is nothing to show that there was any prospect or likelihood of a discontinuance of such work if the legislature should fail to grant tax immunity."

This would seem to establish a new rule as to the sufficiency of an undertaking as a consideration, viz: Where the undertaking is to continue a line of action theretofore indulged in, such undertaking cannot constitute a sufficient consideration *unless it be established that there was at the time a prospect or likelihood of a discontinuance of such line of action.* It is submitted that no such rule as to sufficiency of consideration ever existed or found support

in any authority. At the time of the enactment of the supplement of 1870 the plaintiff in error was under no legal obligation to continue its educational work. Then the legislature said to it, substantially, "If you will continue this beneficent work, will improve your properties and maintain them for this purpose, we agree that your property shall be free from taxation." This was the view of this court not only in the *Home of the Friendless* case, as already pointed out, but also in the case of *University* v. *People*, 99 U. S. 309. That case is substantially on all fours with the instant case. There the university was incorporated by statute in 1851. In 1855 an amendment to the incorporating act was passed which provided that "all property, of whatever kind or description, belonging to or owned by the corporation, shall be forever free from taxation." Thereafter it was sought to tax, under the authority of a general statute passed in 1872, such portions of the real estate of the university as were leased by it or were otherwise used with a view to profit. This court held, in an opinion by Mr. Justice Miller, that the statute of 1855, amending the charter of 1851 by exempting the real estate of the university, constituted an irrepealable contract. On the question of consideration for such contract the opinion says (p. 322):

> "It is possible, if that question had been fully investigated, and all the facts necessary to decide it were before the court, it might not appear that all the lands sub-

jected to taxation by the judgment of the Supreme Court were bought after the date of the amended charter, or donated on the faith of that exemption.

"But it does appear, by a stipulation made for that purpose, that since the granting of said amended charter the corporation has expended, in the erection and purchase of buildings, apparatus and other facilities and appliances for education, and for the promotion of the objects stated in and contemplated by the act of incorporation, over $200,000, realized from donations and the sale of lots and lands, and has built up a university, with several departments of learning, in which more than five hundred students are taught the higher branches of learning.

"It is, perhaps, a fair inference from this statement, and in deference to the holding of the Supreme Court, that there was such acceptance of this act of 1855, and such investments made on the faith of it, that at least some portion of the property now in question is protected by contract, if the exemption clause lawfully covers it."

And on page 321:

"If by virtue of that constitution the legislature of that day could only exempt plaintiff's real estate so far as it was in immediate use for school purposes, as was held by the Supreme Court, then it may not repeal that statute or impair that contract, for the exemption will probably

amount to the same thing under either statute. But if it is a contract, as is contended for by plaintiff's counsel, which, under a true construction of the Constitution of 1848, exempts all the property of plaintiff which is held by it for appropriation to the purposes of the university as a school, as an institution for teaching, and which is held for no other purpose, whatever, *and which can as effectually promote the purpose by leases, of which the rent goes to support the school as in any other way*, then the law of 1872 and the Constitution of 1870 do, to the extent of the difference arising from these two constructions, impair the obligation of the contract of 1855."

The court thus held in *University* v. *People*, that the amendatory act constituted an irrepealable contract exempting all the property of the university, since it appeared that after the passage of such amendatory act the university had expended moneys for the promotion of the objects contemplated by the original act of incorporation. Similarly, in the present case Seton Hall College has expended moneys in the erection of buildings and other improvements to its property and in the promotion of the objects contemplated by its charter, some of said buildings and improvements being constructed upon the lands here assessed. It is further apparent that the lands in question effectually promote the purpose of the corporation since the products thereof go to the sup-

port of the school, just as in *University* v. *People* the profits of the leases of the properties in question were regarded as effectually promoting the objects of the corporation by being utilized in supporting the institution.

These two cases, the *Home of the Friendless* and *University* v. *People,* would seem to be a sufficient answer to the holding of the New Jersey courts that there was no consideration for the contract of exemption in this case. It is true that in the Illinois case the amount of money expended by the university, after the passage of the amendatory act granting the exemption, was over $200,000; while in the present case the amount of money expended after the passage of the supplement of 1870 does not appear in the record, but obviously was not so great. However, the *quantum* of the consideration is immaterial; as is also the amount of the impairment of the obligation.

In *Farrington* v. *Tennessee,* 95 U. S. 679, Justice Swayne said (p. 583):

> "An executory contract is one where it is stipulated by the agreement of minds, upon a sufficient consideration, that something is to be done or not to be done by one or both the parties. Only a slight consideration is necessary. *Pillans* v. *Van Mierop,* 3 Burr. 1663; *Forth* v. *Stanton,* 1 Saund. 210, note 2, and the cases there cited. The constitutional prohibition applies alike to both executory and executed contracts, by whomsoever made. The amount of the impairment of the obligation is im-

material. If there be any, it is sufficient to bring into activity the constitutional provision and the judicial power of this court to redress the wrong. *Von Hoffman* v. *City of Quincy*, 4 Wall. 535."

Point III.

The contract of exemption in this case is irrepealable, unless the right to repeal it was reserved.

The right of the state to repeal such a contract has been repeatedly denied by this court.

New Jersey v. *Yard*, 95 U. S. 104.

Home of the Friendless v. *Rouse*, 8 Wall. 430.

Washington University v. *Rouse*, 8 Wall. 439.

University v. *People*, 99 U. S. 309.

In *Home of the Friendless* v. *Rouse, supra*, the charter of 1853, incorporating the Home of the Friendless in the City of St. Louis for the purpose of encouraging the establishment of a charitable institution, provided that "all property of said corporation shall be exempt from taxation." The corporation was organized and acquired a considerable amount of real estate in St. Louis. Upon the adoption of the new constitution of 1865 the Missouri legislature imposed a tax upon the real estate of the corporation. This court held that this latter law violated the obligation of the contract and was therefore void. In the opinion, Mr. Justice Davis, after stating the object for which the

corporation was formed, referring to the benefits to be derived from a charity of such a nature, and suggesting that these considerations moved the legislature to say to the incorporators that if they would organize the society and conduct its affairs, would give themselves and solicit others to give for the common purpose, "the property of the corporation shall be exempt from taxation," pointed out that the objects for which the corporation was created were a benefit to the community, that such benefit constituted the consideration for the contract and that no other was required to support it. Referring to the contention that the rules of construction applicable to legislative contracts are more stringent than those which are applied to natural persons, the opinion says:

> "It is true that legislative contracts are to be construed most favorable to the state if on a fair consideration to be given the charter, any reasonable doubts arise as to their proper interpretation; but, as every contract is to be construed to accomplish the intention of the parties to it, if there is no ambiguity about it, and this intention clearly appears on reading the instrument, it is as much the duty of the court to uphold and sustain it, as if it were a contract between private persons. Testing the contract in question by these rules, there does not seem to be any rational doubt about its true meaning. 'All property of said corporation shall be exempt from taxation,' are the words

> used in the act of incorporation, and there is no need of supplying any words to ascertain the legislative intention. To add the word 'forever' after the word 'taxation' could not make the meaning any clearer. It was undoubtedly the purpose of the legislature to grant to the corporation a valuable franchise, and it is easy to see that the franchise would be comparatively of little value if the legislature, without taking direct action on the subject, could at its will resume the power of taxation."

The foregoing portion of the opinion of Mr. Justice Davis in the *Home of the Friendless* case is quoted and followed by this court in the opinion of Mr. Justice Brewer in *Powers* v. *Detroit & Grand Haven Ry.*, 201 U. S. at p. 559.

Washington University v. *Rouse, supra,* is a companion case to the *Home of the Friendless* case and was decided at the same time. There the charter was to an institution of learning. It was granted in 1853 by the same legislature which incorporated the Home of the Friendless. It contained exactly the same provision about freedom of the corporation from taxation. This court held in an opinion by Mr. Justice Davis that:

> "There are no material points of difference between the case just decided and this case, and the views presented in that case are applicable to this. The object of the charter in the one was to promote a charity, in the other to encourage learning. Both were public objects of advantage to the coun-

try, and which every government is desirous of promoting. Whether the endowment of a charity is of more concern to the state than the endowment of a university for learning, is within the power of the legislature to determine. If the legislature has acted in a manner to show that it considered both objects equally worthy of favor, it is not the province of this court to pass on the wisdom of the measure. On the contrary, it is the duty of the court to carry out the intention of the legislature, if ascertainable, by applying to both charters the ordinary rules of construction applicable to legislative grants. * * * * The public purposes to be attained in each case constituted the consideration on which the contracts were based. The charter of the University, with its amendment (not material to notice, because not affecting this question), having been accepted, and the corporation, since its acceptance, having been actively employed in the specific purpose for which it was created, the exemption from taxation became one of the franchises of the corporation of which it would not be deprived by any species of state legislation."

In *University* v. *People, supra,* the legislature of Illinois incorporated North Western University by a statute enacted in 1851. By an amendment to this act of incorporation passed in 1855, the legislature provided that "all property, of whatever kind or description, belonging to or

owned by the corporation shall be forever free from taxation." In 1870 a new constitution provided that such property as was used exclusively for school and charitable purposes might be exempted from taxation, but such taxes should be only by general law. In 1872 the legislature revised its revenue laws, and therein exempted "all property of institutions of learning, including the real estate on which the institutions are located not leased by said institutions or otherwise used with a view to profit." Under this law the assessment in controversy was laid against various parcels of real estate belonging to the university and leased by it to different parties, the income thereof being devoted to the objects of the corporation. The opinion of this court deals largely with a comparison between the language of the Constitution of 1848 as to property "necessary for school purposes" and the language of the Constitution of 1870, "property used exclusively for school purposes." As has been indicated heretofore in this brief, however, this court held that this exemption, thus given in the act amending the charter, constituted a contract that was irrepealable by any subsequent legislation. *University* v. *People* is, it is submitted, specific authority for the plaintiff in error.

Point IV.

The contract is not affected by the act of 1846 purporting to reserve to the legislature the right to alter, suspend and repeal the charter of any corporation thereafter granted.

A general statute of 1846 provided:

> "That the charter of every corporation which shall hereafter be granted by the legislature shall be subject to alteration, suspension and repeal, in the discretion of the legislature." (N. J. Laws 1846, p. 16.)

Doubtless it will be contended by the defendant in error that this general statute of 1846 reserved to the legislature the right to alter the exemption contract contained in the act of 1870. This was contended before the state court, and this contention is referred to, but not determined, by the Board of Equalization of Taxes in its opinion, which was affirmed by the state Supreme Court and the Court of Errors and Appeals. The opinion points out that the legislature may enter into an irrevocable contract as to taxation with a private corporation, which is not subject to alteration by a subsequent legislature by virtue of the right reserved in the act of 1846; but that the question which arises in each particular case is whether the exemption is a mere gratuity or whether the elements of a binding contract are present. The opinion continues: "If the act of the legislature relied upon by the appellant (i. e. the act of 1870) constituted a binding contract, the exemption contended for must be allowed. If it was not such

a contract, then the claim for exemption must fail." The opinion then goes on to determine that the statute did not constitute a binding contract, but was a mere gratuity.

This statute of 1846, reserving to the legislature the right to alter and repeal, in its discretion, the charters of corporations thereafter granted, was considered and expounded by this court in the case of *New Jersey* v. *Yard*, 95 U. S., 104.

It was there held that notwithstanding the act of 1846 any subsequent legislature might make an irrepealable contract, and that it was a question in each case of a contract made by the legislature whether that body intended that the right to change or repeal it should inhere in it or not. The New Jersey Court of Errors and Appeals has had no doubt about the meaning and application of this statute of 1846, since it was thus expounded in *New Jersey* v. *Yard*. In a leading case, the Court of Errors and Appeals, referring to this statute, said:

> "For many years after the passage of this act it was uniformly held by the courts of this state that the sixth section of the act of 1846 was to be literally read into every charter thereafter granted by the legislature, thereby rendering every such charter subject to repeal or alteration at legislative discretion. Such was the judgment of this court in *Morris and Essex Railroad Co.* v. *Commissioners of Railroad Taxation*, 9 Vroom, 472, decided in 1875. That case was removed to the Supreme Court of the United

States and the decision of this court was reversed. *New Jersey* v. *Yard*, 95 U. S., 104. The federal court, in reversing declared that a legislature could not bind its successors; that, notwithstanding the act of 1846, it was still competent for any legislature to make an irrepealable contract if it elected to do so, and that it was therefore a question in every case of a contract made by the legislature, whether that body intended that the right to change or repeal it should inhere in it, or whether, like other contracts, it was perfect and without the power of the legislature to impair its obligation.

"The federal court held the contract under consideration in that case to be irrepealable because it could not be believed that it was the intent of either party to it that one should be held forever and the other merely at will, and it refused to read the act of 1846 into the contract because the contract was inconsistent with it.

"The rule thus so explicitly laid down by the federal court has since been accepted as the law of this court. *State Board* v. *Morris and Essex Railroad Co.*, 20 Vroom, 192. Unless, therefore, an intention can fairly be drawn from the terms of this contract, as agreed upon by the parties, to reserve to the state the right to repeal the contract at will without the consent of the company, there can be no departure from it." (*Hancock, Comptroller* v. *Singer Sewing Machine Co.*, 62 N. J. L., 287, at 328).

Attention is again called to the fact that in the case at bar the court below did not apply the act of 1846, but merely held that no contract existed. Applying this act of 1846, as interpreted by this court in *New Jersey* v. *Yard*, the question in this case is whether the contract of exemption was a perfect contract, or whether the New Jersey legislature, at the time it enacted the supplement of 1870, intended that the right to change or repeal the contract should inhere in it.

It could certainly not have been the intention of the legislature to make, or of the corporation to accept, a contract of such an unilateral character. So one-sided an arrangement would have been manifestly unfair. To deprive the corporation at will of the benefit it was to receive by the grant of immunity from taxation, after it had given consideration therefor and while it performs its part of the contract, would be utterly repellant to the spirit and purpose of the supplemental act. It cannot be believed that it was the intent of either party that one party should be held to continue its beneficent work in the advancement of education perpetually, while the other party need be held only for a day; or, that the service to the state rendered by this educational institution should cease upon the withdrawal of the tax immunity at the mere caprice of a subsequent legislature. If the exempting supplement of 1870 constituted a contract, accepted and acted upon in good faith by the corporation, it would be a reflection upon the integrity and fair dealing of the legislature

to impute to it an intention to repeal subsequently its generous grant of immunity, or to reserve to itself any such right, without a clear expression of it, and they then doubtless would have deemed it "derogatory to the state to resort to any subterfuge, or narrow and sharp construction, in order to evade the effect of the contract," as Mr. Justice Van Syckel expressed it in the Court of Errors' unanimous opinion in *Singer Mfg. Co.* v. *Heppenheimer,* 58 N. J. Law, p. 637.

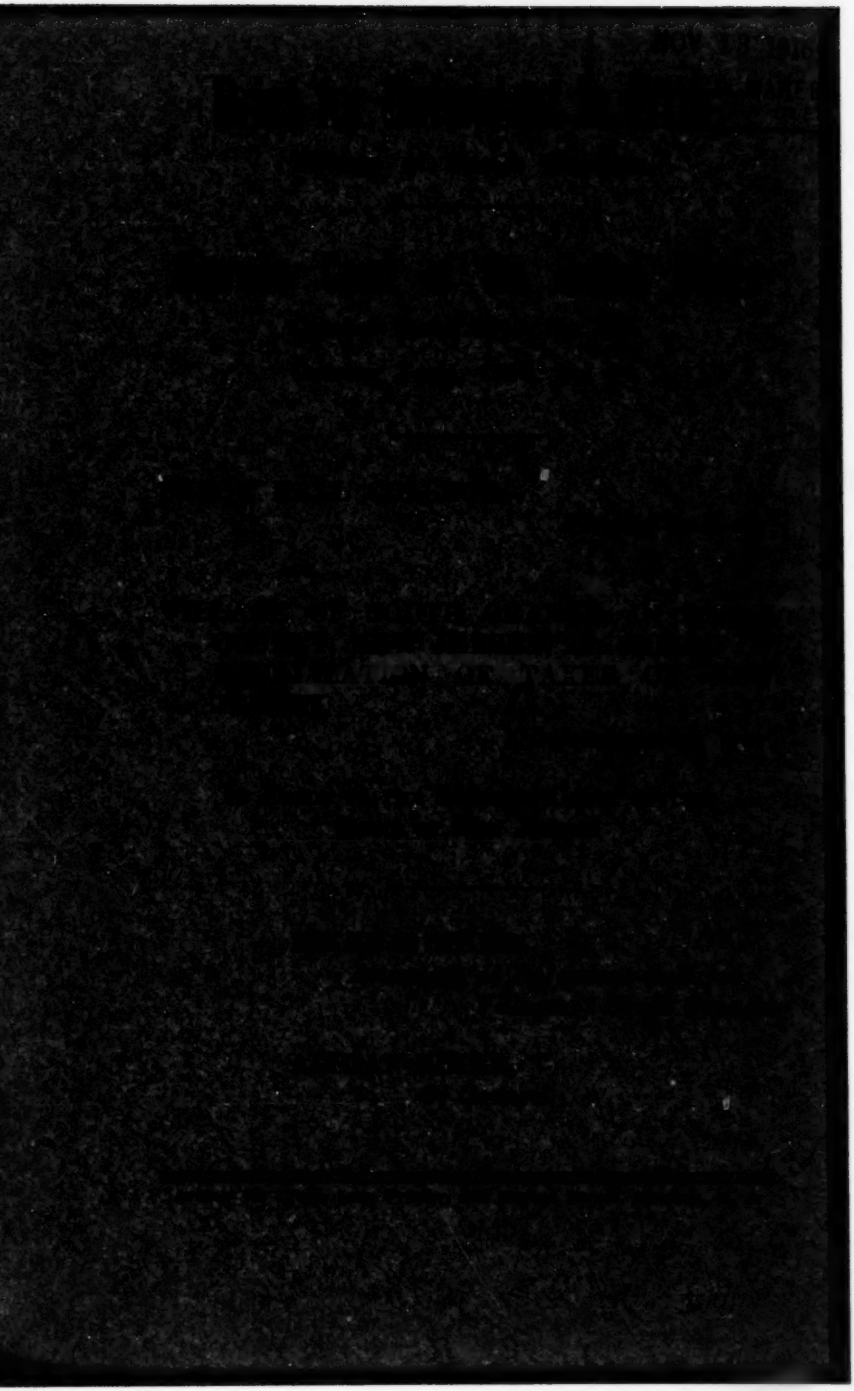
But there is another respect in which the decision of *New Jersey* v. *Yard* has special application to this case. In that case the railroad company was chartered by an act of 1835, section 20 of which provided that the legislature reserved to itself "the right to alter, amend or repeal *this act,* whenever they think proper." The legislature of 1836 in a *supplement* to the charter repealed section 20 and substituted this language: "The legislature reserve to themselves the right to alter or amend *this supplement, or the act to which this a supplement,* whenever the public good may require it." In 1865 there was passed the statute which was claimed by the railroad company to constitute the exemption contract. A statute of 1873 imposed a more burdensome tax upon all railroad companies not exempted by irrepealable contracts.

On these facts this court not only held, that the act of 1846 did not apply to supplements to an existing charter which were enacted subse-

quent to the statute; but also held that the supplement of 1836 reserving "the right to alter or amend this supplement, or the act to which this is a supplement," did not apply to a contract made in a supplement thereafter passed. In other words, although the railroad charter expressly reserved to the legislature the right to alter, amend or repeal it whenever they might think proper, and although a supplement thereto substituted the language: "the legislature reserve to themselves the right to alter or amend this supplement, or the act to which this is a supplement, whenever the public good may require it," this reservation thus made in the charter itself did not apply to a contract made in a further supplement to the charter. Applying this principle thus enunciated in *New Jersey* v. *Yard* to the present case, and assuming, *causa argumenti*, that the act of 1846 is to be read into the charter of Seton Hall College, it must necessarily follow that the right thereby reserved to alter, suspend or repeal said charter can have no application to the binding contract made with the corporation and embodied in a supplement to its charter.

It is respectfully submitted that the judgment below should be reversed, and direction given that the tax be set aside, with costs.

WILLIAM J. KEARNS,
Counsel for Plaintiff in Error.



Supreme Court of the United States

SETON HALL COLLEGE, *Plaintiff-in-Error,* *vs.* VILLAGE OF SOUTH ORANGE, IN ESSEX COUNTY, NEW JERSEY, and BOARD OF EQUALIZATION OF TAXES OF NEW JERSEY, *Defendants-in-Error.*	*In Error to the Supreme Court of the State of New Jersey.*

Brief for Defendant in Error, Village of South Orange.

Statement of Facts.

This is an appeal by Seton Hall College, a corporation of the State of New Jersey, from the assessment of taxes by the local authorities against certain lands owned by such college. As appears from the stipulation of facts (see Transcript of Record, page 7) Seton Hall College was incorporated in 1861, and later in 1870 a supplement to its charter was passed providing solely "That the provisions of the fifth section of an act entitled 'An act to incorporate the Drew Theological Seminary of the Methodist Episcopal Church,' approved February 12th, 1868, in relation to the exemption of the real and personal property of said corporation from assessment and from taxation, be, and the same are hereby extended to the

corporation created by the act to which this is a supplement."

The act incorporating Drew Theological Seminary was passed in 1868; the fifth section of such charter providing "The property of said corporation, real and personal, shall be exempt from assessment and from taxation."

It is on the basis of this clause alone that the plaintiff-in-error seeks to have the assessment set aside as illegal as an impairment of the obligation of a contract, it being admitted that the lands assessed are not exempt from taxation under the general tax act of 1903 of the State of New Jersey.

It is further stipulated (Transcript of Record, page 7) that the lands in question were acquired by the plaintiff-in-error in 1864, in other words, six years previous to the passage of the exemption supplement. And it further appears that in 1846, twenty-four years previous to the passage of the exemption supplement, and fifteen years previous to the incorporation of the plaintiff-in-error, "An act concerning corporations," was passed by the New Jersey Legislature, providing that "The charter of every corporation which shall hereafter be granted by the legislature, shall be subject to alteration, suspension and repeal in the discretion of the legislature," P. L. 1846, p. 16, section 6, such provision now forming section 4 of the present Corporation Act of the State of New Jersey.

Points of Law.

1. THE SUPPLEMENT TO THE CHARTER OF THE PLAINTIFF-IN-ERROR GRANTING THE EXEMPTION FROM TAXATION HAS BEEN REPEALED, UNLESS IT CONSTITUTES AN IRREPEALABLE CONTRACT:

A. By the constitutional amendment of 1875.

B. By the general tax act of 1903.

(a) It should be premised that the law is well settled to the effect that this court will accept the construction of state statutes by the State Courts, even though it may doubt the correctness of such construction, where no question is involved under the laws or the Constitution of the United States. See the case of *Erie Railway Company* v. *Pennsylvania,* 21 Wall, 492 (22 Sup. Ct. Rep., 595, at page 598):—

> "This construction of a state statute by the Supreme Court of the state, involving no question under the laws or Constitution of the United States, is conclusive upon us. We accept the construction of state statutes by the State Courts, although we may doubt the correctness of such construction. We accept and adopt it, although we may have already accepted and adopted a different construction of a similar statute of another state, in deference to the Supreme Court of that state."

See also *Randall* v. *Bingham,* 7 Wall., 530; *Williams* v. *Kirtland,* 13 Wall., 306;

Tioga R. R. Co. v. *Blossburg R. R. Co.*, 5 Blatchf., 387.

The courts of the State of New Jersey have settled the question that due to the constitutional amendment of 1875 there can be no exemption of property from taxation by force of special or local laws, excepting in the case of irrepealable contracts.

See the case of *Seton Hall College* v. *South Orange*, 86 N. J. L., 366 (Court of Errors & Appeals), this very case in which such court, in affirming the opinion of the Supreme Court of New Jersey, says:

> "It is settled, however, that under the amendatory provision of the constitution adopted in 1875, requiring property to be assessed for taxes 'under general laws and by uniform rules, according to its true value,' there can be no exemption of property from taxation by force of special or local statutes, except in the case of contracts which the amendment of the organic law could not reach."

See also *Sisters of Charity* v. *Township of Chatham*, 52 N. J. L., 373 (Court of Errors & Appeals), where Chief Justice Beasley says, in regard to such rule:

> "The general proposition thus applied and announced is, in the opinion of this court, wholly indisputable; it is but the expression of the force of a train of decisions in the Supreme Court and in this court."

See also the cases of *Sisters of St. Elizabeth* v. *Chatham*, 22 Vr., 89; reversed on other grounds in 23 Vr., 373;

Cooper Hospital v. *Camden*, 39 Vr., 691;

State, Newark & S. Orange R. R. v. *Clark*, 53 N. J. L., 332;

Cooper Hospital v. *Burdsall*, 63 N. J. L., 85;

State, North Ward National Bank v. *Newark*, 40 N. J. L., 558 (Court of Errors & Appeals).

(b) In addition, the courts of the State of New Jersey have settled the question that there can be no exemption by force of special or local laws, by reason of the passage of the General Tax Act of 1903 of the State of New Jersey.

In this very case the Court of Errors & Appeals of the State of New Jersey has said:

> "The effect of the General Tax Act of 1903 was to repeal all exemptions except those expressly allowed by that act, as far as the legislature had the power to do so. *Hanover Township* v. *Camp Meeting Association*, 76 N. J. L., 65; 76 N. J. L., 827. It follows, therefore, that the exemption claimed on this appeal has been annulled both by force of the constitutional amendment of 1875 and the operation of the act of 1903, unless the supplement granting the exemption constitutes an irrevocable contract between the state and the appellant."
>
> *Seton Hall College* v. *South Orange* (Court of Errors and Appeals of the State of New Jersey (*supra*).

See also the case of *Public Service Ry. Co.* v. *Board of Equalization of Taxes*, 80 N. J. L., 533.

II. THE EXEMPTION FROM TAXATION GRANTED BY THE SUPPLEMENT TO THE CHARTER OF THE PLAINTIFF-IN-ERROR IN 1870 DOES NOT CONSTITUTE AN IRREPEALABLE CONTRACT, AND SUCH EXEMPTION HAS, THEREFORE, BEEN REPEALED BY THE AMENDMENT OF 1875 TO THE CONSTITUTION OF THE STATE OF NEW JERSEY AND THE GENERAL TAX ACT OF 1903 OF THE STATE OF NEW JERSEY.

(a) A strong presumption always exists against the exemption of property from taxation.

This rule has not only been repeatedly affirmed by the courts of the State of New Jersey, but by the United States Supreme Court itself.

In the case of *Tucker* v. *Ferguson, et al.*, 22 Wall., 527 (22 Sup. Ct. Rep., 805, at page 816), the court lays this rule down in emphatic terms, saying that "*every reasonable doubt should be resolved against it,*" as follows:

> "The taxing power is vital to the functions of government. It helps to sustain the social compact and to give it efficacy. It is intended to promote the general welfare. It reaches the interests of every member of the community. It may be restrained

> by contract in special cases for the public good, where such contracts are not forbidden. But the contract must be shown to exist. There is no presumption in its favor. Every reasonable doubt should be resolved against it. Where it exists it is to be rigidly scrutinized, and never permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require. It is in derogation of public right, and narrows a trust created for the good of all."

See the case of *Hoge* v. *Richmond and Danville R. R. Co.*, 99 U. S., 348 (25 Sup. Ct. Rep., 303), where the court says:

> "Whoever, therefore, claims its (the power of taxation's) surrender must show it in language which will admit of no other reasonable construction. If a doubt arise as to the intent of the legislature, it must be solved in favor of the state."

To the same effect in this court are the cases of

New Orleans R. R. v. *City of New Orleans*, 12 Sup. Ct. Rep., 406; 143 U. S., 192.

Minott v. *The Railroad*, 18 Wall., 206;

Morgan v. *Louisiana*, 93 U. S., 217;

West Wisconsin R. R. v. *Supervisors*, 93 U. S., 395;

Chicago Seminary v. *Illinois*, 188 U. S., 622.

The courts of New Jersey have laid down the rule in no less emphatic terms.

In the case of *Little* v. *Bowers,* 46 N. J. L., 301, Justice Dixon says:

> "In view of the extraordinary character of this power (to exempt from taxation) of the great inconvenience consequent even upon its occasional use, of the utter destruction of government that would follow its frequent and impartial exercise, courts must feel constrained to decide that it has been put in force only *when the opposite judgment cannot be formed by a rational mind.* If there is doubt whether the state has parted with any public right, it is to be resolved that it has not; certainly language can scarcely express the reluctance of courts to infer that this most important of all public rights has been surrendered."

To the same effect see the cases of

Cooper Hospital v. *Camden* (*supra.*)

State, Board of Assessors v. *Paterson,* etc., 21 Vr., 446.

Sisters of Charity v. *Corey* (*supra*).

(*b*) *The charter of plaintiff-in-error has incorporated in it by implication the provision "that the charter of every corporation which shall hereafter be granted by the legislature shall be subject to alteration, suspension and repeal in the discretion of the legislature."*

By "An Act Concerning Corporations," P. L., 1846, p. 16, section 6, it is provided that "the charter of every corporation which shall hereafter be granted by the legislature, shall be sub-

ject to alteration, suspension and repeal in the discretion of the legislature." This provision now forms Section 4 of the present Corporation Act of the State of New Jersey.

The courts of this state have repeatedly held that such provision must be read into the charter of every corporation incorporated subsequent to that act, together with the supplements thereto and amendments thereof.

In the case of *Little* v. *Bowers, supra,* the court said:

> "All acts of the legislature are performed in contemplation of existing laws and repeals by implication are not favored, and hence this law of 1846 is to be considered as embodied in every corporate charter thereafter passed, unless a purpose to exclude it be plainly preserved."

To the same effect, see the cases of

State, So. Orange & Newark Ry. Co. v. *Clark, supra;* and

Cooper Hospital v. *Camden* (*supra*).

The effect of the passage of this act of 1846 has been determined by this very court in the case of *New Jersey* v. *Yard,* 95 U. S., 104, as well as by the courts of the State of New Jersey as set out on the last two pages of the plaintiff-in-error's brief to be that it is a question of intention upon the part of the legislature as to whether the tax exemption was to be a contract, or subject to change or repeal. But there is surely, in view of the above decisions, an implication that since such act

of 1846 is to be read in connection with subsequent corporate charters very clear evidence should be required, and very clear language in the exemption clause would be necessary, in order to show that the legislature did not intend that such act of 1846 should not apply to that particular corporation, when it was expressly stated that it should apply to all.

The counsel for the plaintiff-in-error has conceived a most ingenious argument based upon the case of *New Jersey v. Yard* (*supra*), and endeavored to show on the last page of their brief that such act of 1846 can have no application to the supplement to the charter of the plaintiff-in-error, which supplement contains the tax exemption clause. The fallacy in this argument, however, is not difficult to ascertain inasmuch as it appears directly in the opinion of Mr. Justice Miller, delivered in this very court, in said case of *New Jersey* v. *Yard*.

As stated in the brief for the plaintiff-in-error the charter of the Railroad Company in such case was obtained in 1835,—in other words previous to the passage of the act reversing to the legislature the right to alter or amend the same. In 1836, by supplement to such charter, the legislature reserved to itself the right to alter or amend "This supplement or the act to which this is a supplement. * * *" Then in 1846 the General Act giving the legislature the right to alter and amend charters was passed; and later in 1865, the Tax Exemption Statute claimed by the Railroad Company was passed.

As Mr. Justice Miller says in the course of his opinion:—

> "The argument is that the original charter and all subsequent amendments and supplements are to be treated merely as parts of one act, and that this reserve of the right to alter or amend became a part of every new law which has reference to that Railroad Company."

He then continues:—

> "The language in the statute we are construing (namely: the supplement of 1836) covers the supplement of 1836, and the original act, *and nothing more*—'the right to alter or amend this supplement, or the act to which this is a supplement'—leaving future supplements to make the same reservation if the legislature so intends."

The court, therefore, clearly shows that it is by reason of the peculiarity of the 1836 supplement to the Railroad Company's charter that such supplement with the reserved right to amend does not apply to the tax exemption statute passed for the railroad's benefit in 1865. The court consequently, in the Yard case, was forced to the conclusion that the 1865 supplement was not involved by the reservation in the supplement of 1836, nor was it affected by the 1846 act, inasmuch as such act "is by its terms limited to charters of corporations granted after its passage," and the charter of the railroad company, as we have seen, was granted in 1835. Consequently the Yard case is in no way an authority for the contention of the plaintiff-in-

error that the right reserved in the act of 1846 can have no application to the supplement to the charter of the plaintiff-in-error, since all that the Yard case holds, and with good reason, is that the peculiar language of the supplement to the charter of the corporation in that case would not apply to a subsequent supplement passed in 1865, and by its very terms the act of 1846 did not apply to the company in question.

(c) *Even where the question of the impairment of the obligations of a contract is involved this court will follow the ruling of the state courts where the true construction is not free from doubt.*

This rule has been repeatedly laid down by the United States Supreme Court as the following cases will show:

In the case of *Waggoner* v. *Flack* (1903), 23 Sup. Ct. Rep., 345, this court said:

> "Although this case involves the question of an impairment of an alleged contract by subsequent legislation, and we are not therefore bound by the construction which the state court places upon the statutes of the state which are involved in such an inquiry, yet, as the true construction of the particular statute is not free from doubt, considering the former legislation of the state upon the same subject, we feel that we shall best perform our duty in such case by following the decision of the state court upon the precise question, although doubts as to its correctness may

have been uttered by the same court in some subsequent case."

See also *Wilson* v. *Standefer*, 184 U. S., 399, at 412; 22 Sup. Ct. Rep., 384.

In the last cited case the court says:

"It will be the duty of this court even in such a case (of an impairment by legislature of contract rights) to follow the decision of the state court when the question is one of doubt and uncertainty. Especial respect should be had to such decisions when the dispute arises out of general laws of a state, regulating its exercise of the taxing power, or relating to the state's disposition of its public lands. In such cases it is frequently necessary to recur to the history and situation of the country in order to ascertain the reason as well as the meaning of the laws, and knowledge of such particulars will most likely be found in the tribunals whose special function is to expound and interpret the state enactments."

See further the case of *Chicago Theological Seminary* v. *Illinois* (*supra*), in which after quoting the above from *Wilson* v. *Standefer*, the Court says:

"We acknowledge and affirm the principle that this court in this class of cases must decide upon its own responsibility as to the existence and meaning of the contract, but in arriving at such meaning in a case like this, the decision of the state court is entitled to exercise marked influence upon the question this court is called upon to

> decide, and where it cannot be said that the decision is in itself unreasonable or in violation of the plain language of the statute, we ought, in cases engendering a a fair doubt, to follow the state court in its interpretation of the statutes of its own state."

See also the case of *Board of Liquidation* v. *Louisiana,* 21 Sup. Ct. Rep., 263, page 269, opinion by the present Chief Justice, and *People ex rel. Interborough Co.* v. *Sohmer, Comptroller of State of New York,* decided April 12th, 1915, 59 L. Ed., 549.

In view of the fact that the lands of the plaintiff-in-error, whose assessment is complained of, were purchased by such plaintiff-in-error previous to the grant of any exemption by the legislature of the State of New Jersey; in view of the fact that such exemption was not one granted by the original charter, but by a supplement thereto after the plaintiff-in-error had come into existence; in view of the fact that there was no *quid pro quo,* either expressed or implied, at the time of the grant of such exemption; and in view of the fact that such exemption was granted at a time when the New Jersey statutes provided that the charters of all corporations should be subject to alteration, suspension and repeal, it would surely seem that it was doubtful to say the least whether such exemption constituted an irrepealable contract.

Under the above rulings of this court it would then follow that the decision of the

Supreme Court of New Jersey, affirmed verbatim by the Court of Errors & Appeals of New Jersey, should be re-affirmed by this honorable court.

(*d*) *The unbroken line of authorities not only in New Jersey, but in the Supreme Court of the United States, shows that the facts in this case do not constitute the charter exemption of the plaintiff-in-error an irrepealable contract.*

The facts in this case show first, that the plaintiff-in-error had already been chartered and in existence for nine years before the exemption supplement was passed; that the lands assessed had been acquired by the plaintiff-in-error six years before the exemption supplement was passed; that such lands were not those upon which the college buildings were erected, but were used solely as pasture lands for cows and the dwellings of help on the farm connected with Seton Hall College, and that finally not only before the passage of such exemption supplement, but before the original charter of the plaintiff-in-error was granted the legislature of the State of New Jersey had decreed that the charter of every corporation thereafter granted should be "subject to alteration, suspension and repeal in the discretion of the legislature." Finally it should be borne in mind that the rule of law is settled in the United States Supreme Court that "Every reasonable doubt should be resolved against it (a legislative contract of exemption from taxation)."

See *Tucker* v. *Ferguson* (*supra*);
West Wisconsin R. R. v. *Board of Supervisors* (*supra*).

Such being the facts and the general rules of construction applicable thereto, let us consider the decision of the New Jersey Supreme Court, affirmed verbatim by the Court of Errors & Appeals. In this opinion the court says:

> "At the time of its passage (that of the exemption supplement) the beneficiary of the act had been in existence for several years, had purchased lands, erected buildings and was carrying out the purpose of its incorporation. Conceding that its work was charitable, and that the legislature might deem the continuance of such work a sufficient consideration for a contract of exemption from taxation, there is nothing to show that there was any prospect or likelihood of a discontinuance of such work if the legislature should fail to grant tax immunity. The passage of the Exempting Act imposed no new burden or obligation upon the beneficiary, and it conferred no new benefit upon the state. True, the extension of the field of its operations by the appellant in consequence of its freedom from taxation, might increase the extent of its benefits to society, as an educational institution, but any such extension was purely voluntary and was in no case a condition to the enjoyment of the tax exemption." (See supplement to transcript of record.)

Does not this decision directly accord with the long line of authorities upon this very point in this very court?

Perhaps the leading case upon this point in the United States Supreme Court is that of *Christ Church* v. *Philadelphia County,* 24 How., 300.

In that case the hospital had been chartered for some years, and thereafter, in much the same way as in the present case, a supplement was passed to the effect "That the real property (of the hospital) * * * shall be and remain free from taxes." Some years later the legislature attempted to tax such real property, such assessment was appealed from, and the Supreme Court of Pennsylvania determined that such exemption was not an irrepealable contract, and an appeal was taken to this court in exactly the same way as in the present case.

In regard to such alleged contract the court says:

> "This concession of the legislature was spontaneous, and no service or duty, or other remunerative condition, was imposed on the corporation. * * * It attached only to such real property as belonged to the corporation, and while it remained as its property; but it is not a necessary implication from these facts that the concession is perpetual, or was designed to continue during the corporate existence. Such an interpretation is not to be favored, as the power of taxation is necessary to the existence of the state, and must be exerted

according to the varying conditions of the commonwealth. The Act of 1833 (Exemption Supplement) belongs to a class of statutes in which the narrowest meaning is to be taken which will fairly carry out the intent of the legislature."

In the comparatively recent case of *Wisconsin & Michigan Railway Co.* v. *Powers* (1903), 24 Sup. Ct. Rep., 107, (191 U. S., 379), an act was passed directing that no railroad should be taxed under certain conditions therein stated; thereafter the predecessor of the appellants railway was chartered under such act, and after the granting of such charter the state attempted to tax such railway. Upon appeal to this court it is stated in the opinion by Mr. Justice Holmes:

"In the case at bar, of course the building and operating of the railroad was a sufficient detriment or change of position to constitute a consideration if the other elements were present. But the other elements are that the promise and the detriment are the conventionel inducements *each for the other.* No matter what the *actual motive may have been,* by the express or implied terms of the supposed contract, the promise and the consideration must purport to be the motive each for the other, in whole or at least in part. It is not enough that the promise induces the detriment or that the detriment induces the promise, if the *other half is wanting.* • • • No doubt the state expected to encourage railroad

> building, and the railroad builders expected the encouragement; but the two things are not set against each other in terms of bargain."

In addition to the rule as laid down in *Christ Church Hospital* v. *Philadelphia County* (*supra*), that where the tax exemption is not granted in the charter there must be a clear consideration for such exemption, an obligation assumed on the part of the exempted charity to the state to make such exemption a contract, we find that the United States Supreme Court holds in the Wisconsin & Michigan Railway case (*supra*), that even where the exemption is contained in the charter, and the state will get the benefit from the incorporation of such quasi public corporation, that such is not alone sufficient even if it be the actual motive for the granting of such exemption, where it is not clearly expressed that the corporation is bound to benefit the public by such enterprise in clear return for the benefit of the exemption.

In the case at bar it is, of course, obvious that neither was there any expressed intention, or as a matter of fact actual motive that the state was bound to receive a specific benefit for the granting of such exemption, nor was such exemption granted by the charter in the direct expectation of receiving any such benefit from the incorporation of such institution.

Furthermore, in the case of *Hoge* v. *Richmond and Danville R. R. Co.* (*supra*), we have a further case in which the court declined to recognize

a tax exemption supplement as an irrepealable contract, in which the facts are very similar to the case at bar.

In that case the Air Line Railway Company was incorporated in 1856 by an act which gave to them "All the rights, privileges and immunities granted to the Greenville and Columbia Railroad Company, under the Act incorporating the same and the several Acts amendatory thereof." The Greenville and Columbia Railroad Company was incorporated in 1845, with an exemption from taxation for a period of thirty-five years, the charter of such company furthering exempting it from the act of the legislature of 1841, which made all charters subject to alteration and repeal. It was, therefore, claimed that the Air Line Railway Company having become entitled to the rights, privileges and immunities of the Greenville and Columbia Railroad Company, in the same way as Seton Hall College became entitled to the privilege of exemption from taxation of the Drew Theological Seminary, had obtained an irrepealable contract of exemption from taxation; the state courts having decided contrary to this contention an appeal was taken to the United States Supreme Court. This court held that since the Air Line Railway was chartered subsequent to the act of 1841, making all charters subject to alteration and repeal, that they took the exemption from taxation subject to such right of alteration and repeal; and, therefore, did not have an irrepealable contract.

We would further call the attention of the Court to the cases of *Tucker* v. *Ferguson* (*supra*), and *West Wisconsin R. R.* v. *Supervisors* (*supra*).

This rule of the United States Supreme Court is equally clearly determined to be the law in the State of New Jersey, not only by the opinion of the Court of Errors and Appeals of that State in this very case (see supplement to the State of the Case), but also by the cases of

Hanover Township v. *Camp Meeting Assn.* (*supra*);

Cooper Hospital v. *Camden* (*supra*);

Little v. *Bowers* (*supra*); and

State, S. O. & Newark Ry. Co. v. *Clark* (*supra*), Affirmed in 25 Vr. 213.

In the Hanover Township case the court says:

"The question which arises is whether in any particular case the exemption, total or partial, is a mere gratuity, or whether the elements of a binding contract are present. If the exemption is a mere gratuity, it is subject to repeal. * * * In every case there is present the element of an agreement evinced by the acceptance of a charter, and the question necessarily is whether there is such a consideration as will make the agreement a binding contract. We fail to find a consideration in the present charter. The whole language speaks of privileges conferred upon the incorporators. No obligation is imposed upon them, nor is there anything to indicate that the legislature expected the State to benefit by the incorporation. To use the language of the Court of

Errors and Appeals in the *Paterson & Ramapo Ry Co. case,* 21 Vr., 446, 'There was no service, duty, expenditure or other remunerative condition imposed upon the corporation, either directly or as a consequence of the exercise of privileges and franchises conferred by the same legislature.' "

In the case of *Cooper Hospital* v. *Camden* (*supra*), the Court of Errors and Appeals of New Jersey, by Justice Pitney (now Mr. Justice Pitney of the United States Supreme Court) says on page 695:

"The consideration upon which the legislature was induced to offer this corporate franchise and the immunity from taxes and assessments was the proposed conveyance to be made by the devisees of William D. Cooper, deceased, and Alexander Cooper. * * * In our judgment, in order to sustain the claim that a contract had arisen, it would require something more than the mere issuance and exercise of the corporate powers; unless the devisees of William D. Cooper, deceased, and Alexander Cooper made over to the corporation or its trustees the lands and moneys *contemplated by the act* there was no such acceptance as would bind the state to refrain thereafter from subjecting the property of the corporation to taxes or assessment."

In the case of *Little* v. *Bowers* (*supra*), the court, by Justice Dixon, construed an exemption from taxation, which was in the following language:

> "It shall be the duty of the treasurer of said company * * * to pay to the treasurer of this state a tax of one-half of one per centum upon the cost of said road * * * provided that no other tax or impost shall be levied or assessed upon the said company."

Despite the fact that the company had accepted this exemption, and the language of the exemption itself, from which it might be inferred that there was a consideration for such exemption, the court held that such charter provision did not constitute an irrepealable contract, inasmuch as such charter had been granted to the company subsequent to the act of 1846, providing that the charter of every corporation thereafter granted should be subject to alteration, suspension and repeal in the discretion of the legislature, that such act should be read in connection with every charter or supplement thereto thereafter granted; and that in view of such act it would seem to be the intention of the legislature to provide merely that at the time of the granting of such charter to the company that in that case no other tax than that stipulated should be imposed, but not that at no other time in the future should no other tax be so imposed. In this very case Justice Dixon clearly distinguishes the case of *New Jersey* v. *Yard*, 95 U. S., 104, upon which great stress is laid by the plaintiff-in-error. The court calls

attention to the fact that in the Yard case the state's right to tax the company had long been a vexed question prior to the passage of the exemption supplement, and that the passage of such exemption supplement was, therefore, the adjustment of the dispute by contract, constituting an accord and satisfaction. The court furthermore calls attention to the language of the supplement in the Yard case, which in its very terms differs from the language of the exemption supplement in the case of *Little* v. *Bowers* (*supra*), and also from its very words shows that there was a contract, such exemption being declared to be "in lieu and satisfaction of all other taxation or imposition whatsoever."

This case of *Little* v. *Bowers* was affirmed by the Court of Errors and Appeals of New Jersey in 19 Vr., 370, and has ever since been followed in that state.

It would, therefore, seem that in the present case the plaintiff-in-error has in no way brought itself within the rule as laid down by the United States Supreme Court, or the courts of the State of New Jersey, so as to constitute its tax exemption supplement an irrepealable contract; for in the first place its charter was granted and accepted nine years before the exemption from taxation was granted; it had exercised its franchises for that period of time without any regard to such exemption; in the second place when the exemption was granted no gifts of land or money were in anyway contemplated, so as to constitute a consideration for such exemption,

in fact the very lands now taxed were obtained by the plaintiff-in-error several years previous to the granting of such exemption; in the third place there was no condition or obligation of any character imposed upon the corporation in consideration of the granting of such exemption; and in the last place it was not only accepted but also chartered subsequent to the act of the legislature of the State of New Jersey declaring the intention of such legislature that charters thereafter granted should be subject to alteration, suspension or repeal in its discretion.

The plaintiff-in-error has cited certain cases alleged to be in support of its contention, but upon examination of these cases we feel that this court will find that such cases far from being in support of the contention of the plaintiff-in-error, merely substantiate and follow the rule as laid down in the above cited cases from the United States Supreme Court and the courts of the State of New Jersey, to the effect that the exemption supplement granted to the plaintiff-in-error is clearly not an irrepealable contract.

The case of *New Jersey* v. *Yard* (*supra*), upon which great stress is laid by the plaintiff-in-error has been clearly distinguished (*supra*), and we will say nothing further in that regard.

In the case of *Home of the Friendless* v. *Rouse,* 75 U. S., 430, the prosecutor was incorporated in 1853 under an act providing that the property of the corporation should be exempt from taxation. The corporation accepted this charter and engaged in the conduct of its chari-

table enterprise. This, of course, constituted valuable consideration under the rule as laid down by this Honorable Court in the case of *Christ Church Hospital* v. *Pennsylvania* (*supra*), but obviously it is no authority for the plaintiff-in-error's contention, for the reason that the plaintiff-in-error's statutory exemption was not a charter provision, but a provision in a supplement after the plaintiff-in-error had exercised its franchise for several years without any regard to such exemption.

Furthermore the State of Missouri, in the Rouse case, had in 1845 passed an act providing that charters thereafter granted should be subject to alteration, suspension and repeal in the discretion of the legislature in the very words of the New Jersey act, while the act incorporating the Home of the Friendless provided that such section of such act of 1845 should not apply to this corporation. In regard to this provision the United States Supreme Court says in its opinion:

> "As the charter in controversy was granted in 1853, it would have been subject to this general law if the legislature had not, in express terms, withdrawn from it this discretionary authority."

Consequently this case far from being an authority in favor of the plaintiff-in-error is directly opposite to its contention, inasmuch as the court clearly infers that in the absence of such a provision in the Home of the Friendless charter its exemption would have been subject to repeal by reason of the act of 1845 of the

State of Missouri; and inasmuch as the rule as laid down in the above case refers to a charter exemption supplement, and not to a tax exemption granted by a supplement after the state had long obtained the benefit of the existence and use of the franchises of the charitable institution.

The decision in the case of *Washington University* v. *Rouse,* 75 U. S., 439, also cited by the plaintiff-in-error, rests upon exactly the same ground as the case of *Home for Friendless* v. *Rouse* (*supra*), for the same tax exemption was granted in the charter of the University, and such charter contained the same provision as to the freedom of such University from having its charter interfered with at the discretion of the legislature.

In the case of *Chicago Theological Seminary* v. *Illinois* (*supra*), the facts show that the tax exemption was granted not in a supplement, but in the very charter of the Seminary, and that on the faith of such provision such Seminary expended large sums of money in the erection of buildings, purchase of real estate, etc. Moreover, such charter exemption provided not simply that the property should be free and exempt from all taxation, but that such property should be "forever" free and exempt from such taxation. Certainly no clearer language could be used to express the intention of the legislature to make such exemption an irrepealable contract, it being constituted such by the acceptance of the charter and the action thereunder by the Seminary.

The plaintiff-in-error further cites the following cases to the effect "that an exemption from taxation for a valuable consideration constitutes a contract within the meaning of the Constitution."

Asylum v. *New Orleans,* 105 U. S., 362;
Home of the Friendless v. *Rouse,* 8 Wall., 430;
New Jersey v. *Wilson,* 7 Cranch, 164;
State Bank v. *Knoop,* 16 How., 363;
Wilmington Railroad v. *Reid,* 13 Wall., 264;
Humphrey v. *Pegues,* 16 Wall., 244;
Farrington v. *Tennessee,* 95 U. S., 679;
New Jersey v. *Yard,* 95 U. S., 104.

The defendant-in-error, of course, has no quarrel with this statement of the law, but would like to call the court's attention to the fact that every single one of the cases cited by the plaintiff-in-error in support of this proposition, with one exception (and that is *New Jersey* v. *Wilson,* (*supra*), are cases where the exemption sought to be enforced is one contained in the original charter, upon the basis of which the corporation in question undertook its public or quasi-public enterprise; and consequently, as shown above, a valid contract was created. The one exception in the cases cited by the plaintiff-in-error in support of this proposition (that of *New Jersey* v. *Wilson, supra*), is where the State of New Jersey settled a dispute with certain Indians therein as to the title to certain lands by vesting title to a portion of such lands in them with the provision that such lands should thereafter be

free from taxation. This, of course, as constituting a settlement, was a valid contract, and therefore enforceable. But none of the above cases are authorities in anyway militating against the general rule in this court as set out previously.

Again the plaintiff-in-error cites a series of cases as follows to the effect that "The exemption is presumed to be upon sufficient consideration and binds the state if the charter containing it is accepted."

New Jersey v. *Wilson*, (*supra*);
Gordon v. *Appeal Tax Court*, 3 Howard, 133;
Piqua Bank v. *Knoop*, 16 *Id.*, 369;
Ohio Life and Trust Co. v. *Debolt*, 16 *Id.*, 416;
Dodge v. *Woolsey*, 18 *Id.*, 331;
Mechanics' and Traders' Bank v. *Thomas*, *Ib.*, 384;
Mechanics' and Traders' Bank v. *Debolt*, *Ib.*, 380;
McGee v. *Mathis*, 4 Wallace, 143;
Powers v. *Detroit Railway*, 201 U. S., 543.

We do not feel that there can be any serious quarrel with this proposition, since it is, of course, evident that the presumption of sufficient consideration is not an irrebutable one, but we would again call the court's attention to the fact that every case cited by the plaintiff-in-error with one exception in support of such proposition is one in which the exemption was a charter exemption, and not one embodied in a supplement, so that the same rule as above stated would apply.

The exception is that of *McGee* v. *Mathis*, 4 Wall., 143. But this case has no very clear pertinency to the one at bar, inasmuch as it does not involve a corporate tax exemption in anyway, but an exemption from taxation for swamp lands in Arkansas which were granted by the United States Government to the State of Arkansas for reclamation.

The case of *University* v. *People*, 99 U. S., 309, (25 U. S. Sup. Ct. Rep., 389) is further cited by the plaintiff-in-error in support of its contention, but in this case there are several clearly distinguishing features, and in fact such case would seem to be more of an authority for the contention of the defendant-in-error than for that of the plaintiff-in-error For first, the charter exemption stated that such exemption should be "forever," thereby showing the clear intention of the legislature that such should be an irrepealable contract; second, such exemption was granted without either the express or implied inclusion of the power of the legislature to alter or repeal such charter; and third, the court in its opinion said: "The court thus concedes that there was a contract so far as the legislative power extended. It is possible, if that question had been fully investigated, and all the facts necessary to decide it were before the court, it might not appear that all the lands subjected to taxation by the judgment of the Supreme Court were bought after the date of the amended charter, or donated on the faith of that exemption." The court then continues to the effect that if such lands had been obtained previous to

the granting of the exemption they would not be exempt.

This is exactly the case of the lands sought to be exempted by the plaintiff-in-error in this case, for such lands were acquired six years prior to the granting of the tax exemption to Seton Hall College.

It would consequently appear that the Supreme Court of the United States, in a case cited by the plaintiff-in-error, has determined that lands such as the plaintiff-in-error's were not entitled to exemption where bought before the grant of such exemption, even if the charter exemption itself was an irrepealable contract.

The plaintiff-in-error further cites the cases of *Mt. Pleasant Cemetery Co.* v. *Newark*, 23 Vr., 539, and *Singer Manufacturing Co.* v. *Heppenheimer*, 25 Vr., 439 (33 Vr. 689).

These cases are also quite in accord with the rule enunciated above, and show even more clearly that the plaintiff-in-error has no irrepealable contract of tax exemption.

In the *Mt. Pleasant Cemetery Co.* case the exemption was provided for in the charter itself; and, therefore, the acceptance of the charter and the incurring of the obligations incident to the enterprise formed a good consideration for the exemption. As the court, by Chief Justice Beasley, says:

> "Here we have this legislative promise of exemption set forth in the original charter of this company; it was made while the matter was in fieri, and it was obviously an

inducement to the corporators to accept the charter and incur the expenditures incident to the enterprise, and, on the other side, the legislature had for its consideration the expectation of the benefits that might result from such expenditure."

Furthermore, it should be remarked that the charter of such corporation was granted previous to 1846, and not subsequent thereto as in the case at bar, and consequently the provision that the legislature could alter and repeal the provisions in such charter was not made a portion of the charter of the Cemetery Company. These two reasons, therefore, obviously constitute the distinguishing features between that case and the case at bar, and the reasons why the Court of Errors and Appeals of New Jersey held that the Cemetery Company had an irrepealable contract of tax exemption.

In the *Singer Manufacturing Company* case the tax exemption provision was incorporated in the original charter, as in the *Mt. Pleasant Cemetery Company* case, and such charter also provided that such corporation should not be liable to any tax or imposition whatsoever "if and so long as the said corporation should invest and keep invested in real estate within this state the sum of $500,000." This constituted a valid and substantial obligation upon the part of the *Singer Manufacturing Company*, which afforded a valid consideration for the charter exemption, therefore constituting it an irrepealable contract.

The plaintiff-in-error further quotes from the language of the court in this case to the effect that it would be "derogatory to the state to resort to any subterfuge, or narrow and sharp construction, in order to evade the effect of the contract."

This, however, begs the whole question, inasmuch as the question to be decided is whether there is any contract at all as a matter of fact. Of course, if there was such a contract it would be derogatory to the State to endeavor to evade it, but if there is none as the defendant-in-error contends, and as has been unanimously decided by all the courts of the State of New Jersey, it is evident that the State of New Jersey has not been resorting to any subterfuge or other evasion.

In conclusion, it would, therefore, appear:

FIRST. That the tax exemption contained in the supplement to the charter of the plaintiff-in-error has been repealed, unless such exemption is an irrepealable contract—

A. By the constitutional amendment of 1875.

B. By the general tax act of 1903.

SECOND. That the charter exemption of the plaintiff-in-error is not an irrepealable contract for the reasons—

A. That the clause empowering the legislature of the State of New Jersey to alter, suspend or repeal such charter was embodied in it, and thereby the intention of such legislature not to contract itself out of such right is shown.

B. "That every reasonable doubt should be resolved against" holding a tax exemption to be an irrepealable contract.

C. That the plaintiff-in-error did not accept its charter upon the condition of such exemption, did not obtain the lands in question by reason thereof, never undertook any burden or obligation because of such exemption, and was not bound thereby.

D. If there can be any reasonable doubt as to whether such tax exemption constitutes an irrepealable contract this court will follow the settled rule affirmed and re-affirmed in this very case in the courts of the State of New Jersey.

THIRD. A case in this very court, cited by the plaintiff-in-error, has determined that even if a charter tax exemption is an irrepealable contract, where the lands sought to be exempted, as in the case at bar, are acquired previous to such grant of exemption, such lands are not exempt from taxation.

We, therefore, respectfully submit that the decision of the Supreme Court of the State of New Jersey should be affirmed.

Respectfully submitted,

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Of Counsel.

SETON HALL COLLEGE *v.* VILLAGE OF SOUTH ORANGE ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

No. 74. Submitted November 3, 1916.—Decided December 4, 1916.

Nine years after the incorporation and establishment of a college under special charter, a supplemental act declared that its property should be exempt from taxation. Long afterward, a general tax law was passed repealing all general and special acts inconsistent with its terms, and thereunder a portion of the college property, consisting of farm buildings and pasture land, necessary for its use but not productive of income, was assessed for taxation. No previous attempt had been made to tax any part of its property. The college, however, entered upon no new undertaking when the exemption was given, nor promised nor parted with anything because of it. Furthermore, there was in force at that time a law providing that every charter to be granted should be subject to alteration, suspension or repeal in the discretion of the legislature.

Held: (1) That it was reasonable to assume that the exemption was extended subject to the right of alteration and repeal. *New Jersey* v. *Yard*, 95 U. S. 104, distinguished.

(2) That, in view of this and the apparent absence of any promise made or burden assumed in reliance on the exemption, this court was not prepared to hold that the state court erred in holding the exemption a revocable privilege. *Home of the Friendless* v. *Rouse*, 8 Wall. 430, and *University* v. *People*, 99 U. S. 309, distinguished.

In determining whether there is a contract which has been impaired by subsequent legislation, this court, though exercising its right of independent examination, accords much consideration and respect to the decision of the state court construing the state statutes involved in the inquiry.

To all claims of contract exemption from taxation must be applied the well settled rule that, as the power to tax is an exercise of the sovereign authority of the State, essential to its existence, the fact of its surrender in favor of a corporation or an individual must be shown in language which cannot be otherwise reasonably construed, and

all doubts which arise as to the intent to make such contract are to be resolved in favor of the State.

86 N. J. L. 365, affirmed.

THE case is stated in the opinion.

Mr. William J. Kearns for plaintiff in error.

Mr. Adrian Riker for defendants in error.

MR. JUSTICE DAY delivered the opinion of the court.

This is a writ of error to the Supreme Court of New Jersey, seeking to reverse a judgment of that court, which judgment was affirmed by the Court of Errors and Appeals of New Jersey (86 N. J. L. 365) and the record remitted to the Supreme Court. The case involves the validity of a tax levied by the assessor of the Village of South Orange, for the year 1911, the contention being that the act of the legislature of New Jersey of March 16th, 1870, hereinafter referred to, constituted a contract which could not be repealed by subsequent legislation without doing violence to the contract clause of the Constitution of the United States.

The case was heard by the Board of Equalization of Taxes of New Jersey, and by the Supreme Court of that State, upon a stipulation of facts:

"(1) Seton Hall College was incorporated under an act of the Legislature of the State of New Jersey entitled 'An Act to incorporate Seton Hall College,' Chapter 86 of the Laws of 1861, pages 198 and 199, approved March 8, 1861.

"(2) A supplement to said act was passed, being Chapter 167 of the Laws of 1870, entitled 'Supplement to an Act to Incorporate Seton Hall College', approved March 8th, 1861, which supplement was approved March 16th, 1870.

"(3) The act incorporating Drew Theological Semi-

nary of the Methodist Episcopal Church, referred to in the supplement above mentioned, was approved February 12th, 1868 (Laws of 1868, Chap. 2, p. 4).

"(4) That Seton Hall College accepted its charter contained in the Laws of 1861 aforesaid, and thereafter purchased real and personal property from time to time, erected college buildings thereon and continuously since has been and still is actively engaged in carrying out the purposes of its creation and fulfilling its obligations imposed by its said charter, and has been and is exercising all the powers granted by said charter.

"(5) After the supplement to its charter was passed in 1870, Seton Hall College accepted the same, and purchased further lands and erected further buildings, and has continued ever since to live up to the terms of both acts and carry out the purposes of its creation, and has been and is exercising all the powers granted thereby.

"(6) That the lands in question with other lands were acquired by the College by a conveyance dated the 17th day of October, Eighteen Hundred and Sixty-four, and recorded in the office of the Register of the County of Essex on the 21st day of February, Eighteen Hundred and Sixty-five, in Book M-12 of Deeds for said County on page 343.

"(7) That no assessment or tax has been levied or imposed upon the property, real and personal, of Seton Hall College from the date of its original charter in 1861, down to the year 1911; and the tax in question, imposed in the year 1911, is the first tax imposed or attempted to be imposed upon the property of said Seton Hall College, real or personal."

From the act of 1861, under which Seton Hall College was incorporated, it appears that the object of the incorporation is the advancement of education, and that the corporation was given the right to have and possess the authority to confer academic and other degrees granted

by other colleges in the State. The act of 1870, referred to in the stipulation, extended to Seton Hall College the privileges which were granted to Drew Theological Seminary, in relation to the exemption of real and personal property of the corporation from assessment and taxation. The act incorporating the Drew Theological Seminary provided that the property of the corporation, real and personal, should be exempt from assessment and taxation. In 1875 the constitution of New Jersey was amended so as to provide that property should be assessed for taxation under general laws and uniform rules, according to its true value. In 1903, the legislature passed a taxation law (4 N. J. Comp. Stat. 5079), which provided that all property not therein expressly exempted should be subject to taxation, and that all acts, general and special, inconsistent with its provisions, were repealed.

It appears that the lands so assessed are not those upon which the college buildings are erected, but are used for pasture lands for cows and the dwellings of the help on the farm, and that the same are essential and necessary to the use of the college, and that the college derives no pecuniary profit from the lands in question.

Upon the hearing before the Board of Equalization, the president of that body delivered an opinion, in which it was held that the act relied upon did not purport an intention to impose upon the State an irrepealable contract obligation, but was a privilege extended to the corporation by the State, and therefore subject to revocation. This opinion was adopted and affirmed by the Supreme Court of New Jersey, and also by the Court of Errors and Appeals.

This court has the right to determine for itself whether there is a contract which has been impaired by subsequent legislation of the State. This principle has often been recognized and stated in decisions of this court. While this is true, the decision of the state court, con-

struing its own statutes, is entitled to much consideration and respect. *Milwaukee Electric Railway & Light Co.* v. *R. R. Commission*, 238 U. S. 174, 182; *Interborough Transit Co.* v. *Sohmer*, 237 U. S. 276, 284.

In this case, the stipulation of facts shows that Seton Hall College was incorporated under an act of the legislature and entered upon the discharge of its charter obligations without reliance upon any legislative authority exempting it from taxation upon its property. When the subsequent legislation was enacted,—nine years after,—extending to Seton Hall College the same exemption as was given to the Drew Theological Seminary, it entered upon no new undertaking, and made no agreement by which it promised to do something, nor did it part with anything because of the immunity thus extended to it by the State.

It is true that this court has held that a charter contract, express in its character, may arise from the acceptance of and action under the terms of a charter which grants such exemption. In this connection, much reliance is placed by the plaintiff in error upon certain rulings of this court; among others, in *Home of the Friendless* v. *Rouse*, 8 Wall. 430. In that case the corporation is shown to have entered upon its duties and expended its money in reliance upon the grant of the charter, which declared that the property of the corporation should be exempt from taxation, and that that grant was made for the purpose of encouraging such undertaking and enabling the parties engaged therein more fully and effectually to accomplish their purpose; and it was, moreover, provided that the sections of the act concerning corporations, which provided that the charter of every incorporation should be subject to alteration, suspension and repeal at the discretion of the legislature, should not apply to the act creating the Home of the Friendless. This court held that the corporation was thus expressly withdrawn from

the authority of the general act of the legislature giving a right to alter, suspend and repeal, and that, under such circumstances, the acceptance of the charter, and the action under it and in reliance upon its terms, constituted an express contact.

So, in *University* v. *People*, 99 U. S. 309, the act of the legislature declared that the property of the Northwestern University should be *forever* free from taxation, and this court, differing from the Supreme Court of Illinois in that respect, held that the exemption applied, in view of the language used in the statute, not only to lots and lands directly used for the purposes of the institution as a school, but also to other lots, lands and property, the annual profits of which were applied to school purposes, and that the exempting authority of the legislature was not limited to real estate occupied, or in immediate use, by the university.

Furthermore, when the alleged contract exempting Seton Hall College from taxation was made, the New Jersey act of 1846 was in force, providing that:

"The charter of every corporation which shall hereafter be granted by the legislature, shall be subject to alteration, suspension, and repeal, in the discretion of the legislature."

It is true that this act of the legislature was held by this court, in the case of *New Jersey* v. *Yard*, 95 U. S. 104, not to apply to a case where it appeared, from a subsequent act of the legislature, that a contract was made by requiring of the benefited company the performance of certain acts and a formal acceptance within sixty days, otherwise the act to become wholly inoperative. In that case, the company was obligated, in consideration of the tax limitation stated in the act, to commence and do certain work within a year; in consideration whereof the tax was fixed at the rate of one-half of one per cent. This, said this court, had been a subject of disagreement, which

was adjusted, additional rights were granted, and the tax fixed as to its rate and time of commencement, and, in view of these circumstances, it did appear that it was the legislative intention to make such contract in the same manner and on the same terms of equal obligation as other contracts are made, and not to pass a statute which it could repeal under another act of the legislature. But here there being no such express obligation shown it is only reasonable to assume that the legislature extended the immunity from taxation to Seton Hall College subject to the right of alteration and repeal reserved in the act of 1846.

To all claims of contract exemption from taxation must be applied the well settled rule that, as the power to tax is an exercise of the sovereign authority of the State, essential to its existence, the fact of its surrender in favor of a corporation or an individual must be shown in language which cannot be otherwise reasonably construed, and all doubts which arise as to the intent to make such contract are to be resolved in favor of the State. *Hoge* v. *Railroad Co.*, 99 U. S. 348, 354; *New Orleans City and Lake Railroad Co.* v. *New Orleans*, 143 U. S. 192, 195; *Wilmington & Weldon Railroad Co.* v. *Alsbrook*, 146 U. S. 279, 294; *Phœnix Insurance Co.* v. *Tennessee*, 161 U. S. 174, 179; *Yazoo &c. Railway Co.* v. *Adams*, 180 U. S. 1, 22.

Applying these principles, we are unable to conclude that the state court was wrong in finding no binding contract here. As we have said, the college was incorporated under no promise of such exemption, and could not have relied upon it in undertaking the work for which it was organized. After the privilege of the act in favor of the Drew Seminary was extended to it, it made no new promises and assumed no new burdens. It is true it has been kept in operation, and has doubtless continued and expanded its usefulness, but we fail to discover from any-

thing in this record that it would not have done so except in reliance upon the tax exemption extended to it by the legislature. By the terms of that act, the state court has held a revocable privilege was extended and no irrepealable contract was entered into. Bearing in mind our own right of independent examination of questions of this character, we are unable to say that the conclusion reached is not well founded in law and in fact.

It follows that the judgment of the state court must be

Affirmed.